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Department of Banking

Bank Laws of State of Indiana
Mortgage Guarantee Company
Laws, Public Depository Laws,
Petty Loan Laws, Etc.

1921

Compiled by
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Laws, Public Depository Laws
Petty Loan Laws, etc.

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CHAPTER I.

CONSTITUTION OF THE STATE OF INDIANA.

Incorporation of banks Section 1. The general assembly shall not have the power to establish or incorporate any bank or banking company or moneyed institution for the purpose of issuing bills of credit or bills payable to order or bearer, except under the conditions prescribed in this constitution.

1. The conditions spoken of in this section relate to the subject of banking, and this section was designed to insure conformity to these conditions. *Wright v. Defrees et al.*, 8 Ind. 298.

2. Under this constitution, no bank of issue, except a state bank and free or private banks established pursuant to the provisions of the general banking law, can be established in this state. *Brown et al. v. Killiam*, 11 Ind. 449.

General banking law. Sec. 2. No banks shall be established otherwise than under a general banking law, except as provided in the fourth section of this article.

Registry of notes. Sec. 3. If the general assembly shall enact a general banking law, such law shall provide for the registry and countersigning, by an officer of the state, of all paper credit designed to be circulated as money; and ample collateral security, readily convertible into specie for the redemption of the same in gold or silver, shall be required; which collateral security shall be under the control of the proper officer or officers of state.

Bank with branches. Sec. 4. The general assembly may also charter a bank with branches without collateral security as required in the preceding section.

Branches mutually responsible. Sec. 5. If the general assembly shall establish a bank with branches, the branches shall be mutually responsible for each other's liabilities upon all paper credit issued as money.

Liability of stockholders. Sec. 6. The stockholders in every bank or banking company shall be individually responsible, to an amount over and above their stock equal

to their respective shares of stock, for all debts or liabilities of said bank or banking company.

1. This provision was intended, undoubtedly, for the benefit of the creditors of the bank; and a stockholder can not be relieved of such liability by crediting the amount of his stock on a debt due to him from the bank, and a stockholder, who is also a creditor of the bank, can not set off its indebtedness to him, against his liability for its debts. *Gentry v. Alexander*, President of the Bank of Gosport, 16 Ind. 471.

Redemption. Sec. 7. All bills or notes issued as money shall be, at all times, redeemable in gold or silver; and no law shall be passed, sanctioning directly or indirectly, the suspension, by any bank or banking company, of specie payments.

Holder's preference. Sec. 8. Holders of bank notes shall be entitled, in case of insolvency, to preference of payment over all other creditors.

Interest. Sec. 9. No bank shall receive, directly or indirectly, a greater rate of interest than shall be allowed by law to individuals loaning money.

Twenty years' limitation. Sec. 10. Every bank or banking company, shall be required to cease all banking operations within twenty years from the time of its organization, and promptly thereafter to close its business.

Trust fund. Sec. 11. The general assembly is not prohibited from investing the trust funds in a bank with branches, but in case of such investment, the safety of the same shall be guaranteed by unquestionable security.

State not to be stockholder. Sec. 12. The state shall not be a stockholder in any bank, after the expiration of the present bank charter, nor shall the credit of the state ever be given, or loaned, in aid of any person, association, or corporation; nor shall the state hereafter become a stockholder in any corporation or association.

CHAPTER II.

DEPARTMENT OF BANKING.

[Acts 1919, p. 112.]

Department of banking—Bank commissioner.

Section 1. That there shall be and is hereby created a department of the state government, to be known as the department of banking, which shall be provided with office rooms, furniture and all necessary equipment, and be located in the state capitol. Such department of banking shall be administered by a bank commissioner and such deputies, examiners, clerks and assistants as are provided for in this act. Upon the taking effect of this act the governor shall appoint the bank commissioner, who shall serve for the term of two years, and thereafter the term of office of such bank commissioner shall be four years and he shall be appointed by the governor. Any vacancy in such office shall be filled by appointment of the governor for the unexpired term. The governor may remove the bank commissioner from office for cause presented in writing and after ten days' written notice and a hearing to be had before the governor. The bank commissioner shall receive an annual salary of five thousand dollars to be paid monthly out of the state treasury. The bank commissioner, while exercising the duties and powers of his office, as provided for in this act, shall not be an officer of or director in any institution or business, subject to the supervision or control of, or examination by, the department of banking, as provided in this act. The bank commissioner shall take an oath of office, and shall give a bond to the State of Indiana, in the penalty of twenty-five thousand (\$25,000) dollars, with surety thereon, to be approved by the governor, conditioned for the faithful and impartial performance of his duties.

The bank commissioner, with the consent and approval of the governor, shall appoint a deputy bank commissioner and not to exceed ten bank examiners, all of whom shall serve during the pleasure of the bank commissioner, provided that no such appointee shall be removed without consent of the governor. The governor shall appoint a building and loan clerk and not to exceed three building and loan examiners, who shall serve during the pleasure of the gov-

error. The deputy bank commissioner shall possess the same qualifications as are provided in this act for the bank commissioner. No building and loan clerks, bank examiner, or building and loan examiner so appointed shall examine, report upon, or pass upon reports from any bank or other institution of which they may be an officer or director. With the consent and approval of the governor the bank commissioner shall appoint such other examiners, clerks and employes as may be necessary to the proper and efficient administration of such department to serve during the pleasure of the bank commissioner. The salaries and compensations of all deputies, examiners, clerks, assistants, and employes of such department shall be fixed by the bank commissioner, with the consent and approval of the governor, and shall be paid out of the state treasury monthly. All such appointments so made, and the compensation so fixed, shall be approved by an executive order entered in the office of the governor, and certified to the auditor of state, and the treasurer of state.

The deputy bank commissioner and all such examiners shall take an oath of office and execute a bond payable to the State of Indiana in the sum of ten thousand (\$10,000) dollars, with surety thereon to be approved by the governor, and conditioned for the faithful performance of their respective duties.

The deputy bank commissioner shall possess all the powers and authority, and perform all the duties devolved upon the bank commissioner in case of a vacancy in such office, or in case of the absence or inability of the bank commissioner to serve. A report of such department shall be made to the governor on or before the first day of December annually. (As amended, Acts 1921, p. 259.)

Powers and authority of auditor of state transferred to department of banking. Sec. 2. All the powers and authority, now vested by the laws of this state in the auditor of state relative to the incorporation, organization, supervision, control and management of all banks of all kinds authorized by law to transact business in this state; all loan, trust and safety deposit companies of all kinds authorized by law to transact business in this state; all mortgage guarantee companies of all kinds authorized

by law to transact business in this state; all building and loan associations and all rural loan and savings associations of all kinds authorized by law to transact business in this state; and all persons, copartnerships, or corporations authorized by chapter 125 of the acts of the seventieth regular session of the general assembly, to engage in making small loans, are hereby transferred to the department of banking hereby created, and all such powers and authority shall hereafter be exercised by the bank commissioner provided for in this act instead of by the auditor of state, and all such laws relating to such several institutions are hereby continued in full force and effect, excepting as modified by this act.

Transfer of records from auditor's office. Sec. 3. Upon the taking effect of this act all the books, records, documents, reports, files, filing cases and equipment now in the office of the auditor of state, relating to or in anywise connected with the business of all banks, all loan, trust and safe deposit companies, building and loan associations, all mortgage guarantee companies, all rural loan and savings associations, and all business of making small loans, all as mentioned and defined in section two of this act, shall be and are hereby transferred to the department of banking hereby created.

Act effective September 30, 1920. Sec. 4. This act shall be in full force and effect on September 30th, 1920 and the terms of office and employment of the bank clerk, assistant bank clerk, second assistant bank clerk, building and loan clerk, building and loan examiners, and bank examiners, and all other employees in the banking department of the auditor of state as now organized, shall cease on said date.

Traveling expenses. Sec. 5. The bank commissioner, deputy bank commissioner and all other appointees and employees of such department shall be allowed and paid all necessary office expenses, and all necessary expenses incurred while traveling in the performance of official duties.

Southworth-Symons act. Sec. 6. This act shall be known as the Southworth-Symons act.

CHAPTER III.

BANKS OF DISCOUNT AND DEPOSIT.

[Acts 1873, p. 21.]

Articles of association. Section 1. That any number of persons, and not less than five, may form themselves into a corporation, as a bank of discount and deposit, with such rights and powers as are named in this act, by complying with the following requirements:

They shall unite in articles of association setting forth:
First. The name assumed by such association.

Second. The place where it is to be located and its operations as a bank of discount and deposit are to be carried on and its business conducted, designating the county and city, or town.

Third. The amount of its capital stock, which shall not be less than twenty-five thousand dollars, and which shall be divided into shares of one hundred dollars each.

Fourth. The names and places of residences of the shareholders, and the number of shares held by each.

The articles of association shall be signed by the shareholders.

1. This is the only general statute providing for the organization of banks of discount and deposit. *Brighton et al. v. White*, 128 Ind. 320.

Directors. Sec. 2. After the articles of association are completed and signed by the shareholders representing the amount of the capital stock designated therein, said shareholders may proceed to the election of the number of directors named in said articles of association, by ballot, who shall serve one year and until their successors are elected and qualified. And the directors so elected shall, before entering upon their duties, take an oath or affirmation that they will faithfully and honestly discharge their duties as such.

1. An information in the nature of a quo warranto is a proper remedy to determine the right to the office of director in a corporation. *The Carmel National Gas and Improvement Company v. Small et al.*, 150 Ind. 427.

2. An action may be maintained by the receiver of a bank against the directors for gross negligence resulting in waste and loss of the capital,

although there are no debts and the shareholders are the only persons to whom the damages recovered could be distributed. *Coddington et al. v. Canaday, Receiver*, 157 Ind. 243.

3. Liability of the directors of the bank for losses occasioned by their negligence or mismanagement of the business of the bank. *Coddington et al. v. Canaday*, 157 Ind. 243, 61 N. E. Rep. 567.

President and cashier—Bonds—Fees. Sec. 3. The directors shall elect one of their number president and shall also elect or appoint a cashier. The president and cashier shall each take an oath, or affirmation that he will faithfully and honestly discharge his duties and the board of directors shall require of the president and cashier to execute separate bonds, with sureties in such sums as they may deem proper, conditioned that they will honestly and faithfully discharge their several duties as such officers, which said bonds shall be for the benefit of the stockholders and creditors of the bank, and shall be filed in the office of the [bank commissioner] auditor of state, who shall collect, for the use and benefit of the state, a fee of one dollar (\$1.00) for each bond filed: Provided, That such bonds of bank officers as are now on file with the secretary of state are to be transferred, without fee, to the [bank commissioner] auditor of state. A copy of the articles of association certified by the president and cashier to be a full, true and correct copy of the original, shall be filed in the office of the secretary of state of the State of Indiana, who shall file and carefully preserve the same in his office. Copies of such articles of association and certificates, duly certified by the secretary of state, and authenticated by his seal of office, shall be legal and sufficient evidence in all courts of the existence of such association and of every matter or thing which could be proved by the production of the original. (As amended, Acts 1911, p. 7.)

1. A bank's officers and directors are its legal and proper agents and representatives, and by their representations and acts on its behalf the bank is bound in all transactions within the scope of their authority. A national bank may borrow money, either directly upon its own obligations or by discounting notes or bills, and this may be done by the officers without authority of the directors where such has been the custom and usage of the community. *First National Bank of Huntington v. Arnold et al.*, 156 Ind. 487.

2. Officers of bank are not entitled to compensation for their services. *Blue v. Capital National Bank*, 145 Ind. 518.

3. A bank is liable for the frauds of its cashier, perpetrated in the scope, or apparent scope, of his authority. *City National Bank v. Martin*, 8 Am. St. Rep. 632; *Second National Bank of St. Paul v. Howe*, 12 Am. St. Rep. 744; *Phillips v. Mercantile National Bank*, 37 Am. St. Rep. 596; *Goshorn v. People's National Bank of Washington*, 32 Ind. App. 428.

4. Where the cashier of a bank sold a note, and the proceeds were received and retained by the bank, the bank and its receiver are estopped from denying the authority of the cashier to make such sale. *Hawkins v. Fourth National, etc.*, 150 Ind. 117.

5. The bond, required by this section for each of the officers named, is one that will cover all of the duties which he is called upon to perform as such officer, and it is to continue in force so long as he continues in office. *Wallace et al. v. The Exchange Bank of Spencer*, 126 Ind. 265.

6. The contract of the sureties in the bond of a bank cashier, conditioned for the faithful discharge of his duties by such cashier, is a contract of guaranty, and requires the obligor to give notice of the default, or take the chance of loss upon himself. If the guarantee fails to give notice, and thereby damage ensues to the guarantor, it is held that to the extent of such loss the guarantor is discharged. *La Rose et al. v. The Logansport National Bank et al.*, 102 Ind. 332.

7. The cashier of a bank may be liable on his bond for making improper loans. *Wallace v. Exchange Bank*, 126 Ind. 265.

8. A bank president has power to transact the usual business of the bank in the usual way. He is its general fiscal agent and whatever he does within the apparent scope of his authority binds the bank. But a special finding in an action on a promissory note that defendant paid to the president of the plaintiff bank various sums, in the aggregate amounting to more than the balance found due on the note, without finding that such payments were made at the bank, or in the usual course of business, will not warrant the conclusion under the law, that payment was made to the bank. *Tulley v. The Citizen's State Bank of Plainfield*, 18 Ind. App. 240.

9. The president, vice-president and directors of a banking corporation are not entitled to compensation for the ordinary duties of their respective offices in the absence of a governing statute, by-law, regulation or contract providing therefor. *Blue v. Capital National Bank*, 145 Ind. 518.

10. Where the president of a bank is held out to the public as fully empowered to attend to all the business of the bank, an adjustment by him of a claim in favor of the bank, by taking the assignment of a judgment, is valid. *The First National Bank of Indianapolis v. New*, 146 Ind. 411.

11. A note payable to the cashier of a bank is payable to the bank and the bank may sue thereon. *Erwin Lane Co. v. Farmer's Bank*, 130 Ind. 367.

12. A cashier has no power to bind his bank by receiving deposits away from the bank. *Demarest, Treasurer, et al. v. Holdeman et al.*, 34 Ind. App. 685.

13. The directors of a bank have no authority to provide that the bond of the president or cashier shall limit their liability to less than the liability

imposed by statute on such officers. U. S. Fidelity, etc., Co. v. Poetker, 180 Ind. 255.

14. Bonds executed by the officers of a bank organized under the laws of the state are official bonds, and the statute regulating the duties of bank officers becomes a part of the bonds given by such officers, and the principal and sureties are liable on such bonds for the failure of such officers to perform the duties required of them by law. U. S. Fidelity, etc., Co. v. Poetker, 180 Ind. 255.

Corporate powers. Sec. 4. Every association formed pursuant to the provisions of this act, shall from the date of filing of such certified copy of its articles of association in the office of the secretary of state, be a body corporate, but shall transact no business except such as shall be preliminary and incident to its organization, until at least fifty per cent. of its whole capital stock has been actually paid in, and a certificate of that fact by the president and cashier under oath or affirmation filed in the office of the secretary of state. Such association shall have power to adopt a corporate seal, and shall have succession by the name designated in its articles of association and by such name it may make contracts, sue and be sued, complain and defend in any court of law and equity, as fully as natural persons, and may exercise, under this act, all the powers incidental and proper, or which may be necessary and usual in carrying on the business of banking as a bank of discount and deposit; may receive deposits, buy and sell exchange, gold and silver coin and bullion, and may loan money, negotiate, sell and guarantee such loans, and promissory notes, bonds, drafts, bills of exchange and other evidences of debt, and any securities thereof; and may become and act as the trustee for the same as fully as private persons may; but no such association shall issue notes, bills, or other evidences of indebtedness in the form or similitude of bank notes, and intended to circulate as bank notes, or bills, or as money. And such association may contract for, charge, take, reserve, and receive on loans and discounts, the highest rate of interest allowed by the law of this state to be contracted for, taken and received by individuals.

CORPORATE POWERS.

1. A corporation possess only such powers as are expressly given by law, and such implied powers as are necessary to enable them to exercise

the power expressly given. *Franklin National Bank v. Whitehead*, 149 Ind. 560.

2. Banks can not make loans or discounts on their own stock as collateral security except when necessary to prevent loss on debts previously contracted in good faith. *Bank v. Lanier*, 78 U. S. 369.

3. Banks have power to employ attorneys to prosecute or defend suits. *National Bank v. Earl (Okla.)*, 39 P. 391.

4. Banks have no power to make donations of money. They can use the same only for banking purposes. *McCrory v. Chambers*, 48 Ill. App. 445.

5. The transmission of funds by draft, check, or in specie is an essential function of commercial banks, and concerning which the cashier may bind the bank by his contract. *Goshorn v. People's Nat. Bank*, 32 Ind. App. 428.

DEPOSITS.

1. The relation between a bank and a general depositor is that of debtor and creditor and the title to the money so deposited is vested in the bank. *Fletcher et al. v. Sharpe et al.*, 108 Ind. 276.

2. A proper demand of a bank for money on deposit is made when the depositor during business hours presents or causes to be presented at the bank his check, order, draft, receipt, or other writing for the payment of money in the amount desired, which writing, when honored and in the hands of the bank, will be evidence of the authority and direction of the depositor to pay, as well as evidence of payment. *First National Bank v. Staff*, 165 Ind. 162.

3. The "writing up" of the bank book or pass book and returning of same with checks and vouchers to the depositor is the statement of an account by the bank, and the depositor is bound by it as by an account stated. It is not conclusive, but merely prima facie evidence of the dealings between the parties. An account thus stated can always be opened upon proof of mistake or fraud. *Shipman v. Bank of State of New York*, 22 Am. Stat. Rep. 821.

4. A deposit made by the secretary of a corporation in his name as secretary can not be applied by the bank on such secretary's private account. Where a secretary of a corporation deposits its funds in his name and afterwards mingled his individual funds therewith so that the deposits were not distinguishable, the doctrine of confusion of goods applies. *Indiana Trust Company, Executor, v. International Building and Loan Association No. 2*, 165 Ind. 597.

5. If the cashier, without authority from the bank, receives money to be deposited in the bank away from the bank, the bank is not liable unless the money is actually put in the bank. *Demarest v. Holdeman*, 34 Ind. App. 685.

6. Where a bank pays out money on deposit after notice of a suit contesting the ownership thereof, it does so at its peril. *Pearce et al. v. Dill*, 149 Ind. 136.

7. Funds held by clerk of the circuit court, as such officer, can not be applied to the payment of his individual liabilities to the bank, the bank

having knowledge that the funds so applied were trust funds and if so applied may be recovered by a trustee for the use and benefit of the cestui-que trust. *Shepard, Trustee, v. The Meridian National Bank et al.*, 149 Ind. 532.

8. Where a general depositor becomes indebted to the bank, and the debt is due and payable, the bank, by virtue of its lien or right of set-off, may apply the debtor's deposit to the payment of the debt. *The Aurora Bank v. Dils*, 18 Ind. App. 319.

9. If a deposit is made for a special purpose the bank cannot apply it to any other purpose. *Carter v. Martin*, 22 Ind. App. 445.

10. A depositor is entitled to interest from the date of demand. *Nat. Bank of Commonwealth v. Mechanic's Nat. Bank*, 94 U. S. 437.

11. Where a promissory note, negotiable and payable at a bank in Indiana, is sent to said bank properly endorsed for collection, the bank has the right to pay the note out of any general funds of the maker on deposit and charge his account with the amount so remitted. *The Bedford Bank v. Acoam*, 125 Ind. 584.

CHECKS.

1. The written words in a check as to the amount control the figures in the margin thereof. *National Bank of Rockville v. Second National Bank of Lafayette*, 69 Ind. 470.

2. Where money is paid by a bank on a raised check, it can be recovered from the party receiving it. *Parke et al. v. Roser et al.*, 67 Ind. 500.

3. The forged endorsement of a bank check confers no title upon the endorsee. *Indiana Nat. Bank v. Holtsclaw et al.*, 98 Ind. 85.

4. If the holder of a check instead of presenting it for payment himself, procures it to be certified by the bank upon which it is drawn, it becomes, in his hands, substantially a certificate of deposit, and releases the drawer of the check.

Certified checks assure the persons holding the same that the checks are genuine and will be paid; not that the bank is solvent. *Born v. The First National Bank*, 123 Ind. 78.

5. Where a person as an agent of another received a check payable to such agent or bearer on a bank, and such bank applies the sum called for by such check on a debt due from such agent to such bank, the principal of such agent is entitled to recover from such bank the amount so applied. *Citizens' Bank v. Hanison*, 127 Ind. 128.

6. The general rule is that a check delivered by a debtor to his creditor does not extinguish the debt for which it is given. If such debt is paid, it extinguishes the debt, otherwise not. *Boyd v. Olvey*, 82 Ind. 294.

7. A check may be given and received by agreement of the parties as payment of a debt, and the debt for which it is so given is thereby extinguished. In such a case, if the check is not paid for any reason, the right of action is on the check and not on the obligation or indebtedness for which it was given. *Sutton v. Baldwin*, 146 Ind. 361; *Cox v. Hayes*, 18 Ind. App. 220.

8. A creditor who has received from his debtor a check which has proved to be worthless, may treat the check as a mere nullity and bring an action on the original indebtedness. *Cox v. Hayes*, 18 Ind. App. 220.

9. A bank in accepting and paying a check is held to know the signature of the drawer. If the signature is a forgery, the bank can not compel the holder to restore the money unless the holder be in some way implicated in fault. *First Nat. Bank of Crawfordsville v. First Nat. Bank of Lafayette*, 4 Ind. App. 355.

10. The certification of a check in the hands of the payee, the body of which is unaltered, releases the drawer from further liability, and creates a direct liability from the bank to the payee, while, as between the bank and the drawer, it operates as a payment to that extent on his account, and, although prior to its being certified, the check may be countermanded by the drawer, after its certification, it has passed beyond his control and he no longer has power to countermand its payment.

It is the identity of the person, and not of the name, which controls the right to a check. *Meridian Nat. Bank v. First Nat. Bank*, 7 Ind. App. 322.

11. The payment of a forged check, draft, or order by a bank must be borne by it. But where the drawer has been guilty of negligence, which is the immediate and direct cause of misleading the payer into paying it, he must reimburse such payor. *Snodgrass et al. v. Sweetser et al.*, 15 Ind. App. 682.

12. When a bank pays a check to the person to whom it was ordered paid it is entitled to credit for the sum so paid, even where the payee personated another. Names are merely used as one method of indicating identity of persons. *Meyer et al. v. Indiana Nat. Bank*, 27 Ind. App. 354.

COLLECTIONS.

1. A sight draft requires an acceptance to fix the date of its maturity, and, if accepted, requires its presentation for payment the third day of grace. A bank receiving a sight draft for collection must present the draft for acceptance on the same day, or on the next day after it is received, to comply with the rules of the law merchant and the custom of banks. *Citizens' Nat. Bank v. Third Nat. Bank*, 19 Ind. App. 69.

2. Where a bank with whom a note is deposited for collection fails to take the proper steps to charge the drawer or indorsers, in consequence of which the holder is unable to collect the bill, the measure of damages is the face of the bill with interest. *American Express Co. v. Haire et al.*, 21 Ind. 4.

3. A note payable in a bank of Indiana is deposited, before maturity, with that bank, by a bona fide endorsee, for collection; but, on maturity of the note, which remained unpaid, the bank failed to protest the note and to notify the endorser of its nonpayment, within ninety days thereafter the maker was adjudged a bankrupt, the failure to protest the note for nonpayment discharged the endorser. Held, the bank is liable for whatever damage the owner of the note has sustained thereby. *Chapman v. McCrea et al.*, 63 Ind. 360.

4. Claims indorsed to a bank for collection do not become the property of the bank, and if the bank sends a claim thus held to another bank or

person for collection the latter holds the funds, when collected, subject to the control of the owner of the claims. *First Nat. Bank of Crownpoint v. First Nat. Bank of Richmond*, 76 Ind. 561.

5. On the failure of a bank and the appointment of a receiver, any collections made by the receiver on claims left with the bank for collection must be paid to the owners of the claims. *Lamb v. Morris*, 118 Ind. 179.

6. The usual and ordinary custom, by which banks are generally controlled in collecting paper, does not require them to hold the money collected separate and apart from its own funds and remit the identical money collected. The collecting bank becomes the owner of the money collected and is under an obligation to pay or remit, not the very money received, but an amount of equal value; and while a collecting bank, it is true, receives the paper or claim for collection as the agent for the holder, still, when the money is collected and the proper credit given to such holder or owner then, as a general rule, the relation of debtor and creditor is created between the parties and the relation of trustee and cestui que trust does not arise. *Union Nat. Bank v. Citizens' Bank*, 153 Ind. 44.

STOCK.

1. Shares of bank stock are personal property. *Weyer v. Bank*, 57 Ind. 198.

2. Bank stock is personal property, and may be mortgaged as such. *Manns v. Bank*, 73 Ind. 243.

3. The legal title to and ownership of the stock can only pass by a transfer of the stock upon the books of the bank. *Koons v. Bank*, 98 Ind. 178.

4. Mandate lies to compel the officers of a bank to give a sheriff access to its books to transfer stock of the bank to one to whom he has sold such stock on executin, as the statute, *Burns' R. S.* 1914, Sec. 765.

5. Bank stock must be assigned on the books of the corporation as well as a delivery of the stock to create a pledge of the same. *State, ex rel. Koons v. Bank*, 98 Ind. 302.

NOTES PAYABLE IN BANK.

1. In a note payable "at the First National Bank of New Albany," it is not necessary to state that New Albany is in Indiana. Courts judicially know whether places named in a note are within the state of Indiana. *Glenn v. Porter*, 49 Ind. 500.

2. A note payable to the cashier of a bank is to be deemed payable to the bank, and the bank may sue thereon as payee. *Nave et al. v. Hadley et al.*, 74 Ind. 155.

3. Parol evidence is admissible to show that the words "First Nat. Lafayette, Ind.," in a note, had a definite and settled meaning by usage or custom among business men in the neighborhood where the notes were payable. *Lane et al. v. Union Nat. Bank*, 3 Ind. App. 299.

4. Township orders are not negotiable under the rules of the law merchant, and an assignee of such orders has no greater or superior rights than the original payer. *Davis v. Steuben School Township*, 19 Ind. App. 694.

Election and duties of directors. Sec. 5. Every such association shall elect a board of directors annually at such time as may be designated by the first board of directors thereof, or specified in its by-laws, and at all elections of directors each shareholder shall be entitled to one vote for each share of stock held by him. Each director so elected shall serve one year and until his successor is elected and qualified, and before entering upon his duties, shall take an oath or affirmation that he will honestly and faithfully discharge his duties as such during his continuance in office. Shareholders may vote by proxies duly authorized in writing, but no officer, clerk, teller or book-keeper, of such association shall act as proxy. The board of directors may make and establish from time to time, such by-laws as may be deemed proper, not inconsistent with this act, for the regulation and transaction of its business, holding elections for directors, the manner in which its stock shall be transferred on the books of the association, and the manner of appointing officers and agents thereof. Such association may from time to time appoint, besides the president and cashier, such other officers, tellers, clerks, and agents, as may be deemed proper for the transaction of its business, and define their powers and duties, and remove them at pleasure.

The directors shall meet at least once a month and shall keep a record of their acts and proceedings.

The general business of the association shall be under the control and management of the board of directors, who shall cause all proper books to be kept of the transactions and business of the association such as are used in banks, and such books shall at all times be subject to examination and inspection by any stockholders of the association.

1. Some of the duties of directors of a bank of discount and deposit incorporated under this act :

(1) They shall take an oath that they will faithfully and honestly discharge their duties as such.

(2) They shall elect one of their number president.

(3) They shall elect or appoint a cashier.

(4) They shall require and fix the penalty of the bonds of the president and cashier, respectively.

(5) They shall make and establish by-laws for the regulation and transaction of the business of the bank.

(6) They shall meet at least once a month, and shall keep a record of their acts and proceedings.

(7) They shall have control and management of the general business of the bank.

(8) They shall cause all proper books to be kept of the transactions and business of the bank.

2. The supervision of the directors over the business of the bank must be such as will enable them at all times to know its general financial condition, and to check or prevent imprudent or dishonest conduct by the president or cashier. They have the means of knowing, and they are bound to know, the amount and value of the paper and securities held by the bank. They are bound to know the character and habits of the president and cashier. The directors of a bank are agents of the corporation and are personally liable for losses and waste of money and property occurring through the violation of their duties. At law, the remedy must be enforced through the corporation itself, or by a receiver representing the common interest. In equity, the directors may be held liable as trustees for a fraudulent breach of trust even at the suit of an individual shareholder. *Coddington et al. v. Canaday, Receiver*, 157 Ind. 243.

Who ineligible as directors. Sec. 6. No person who is not the owner, in his own right, of at least five shares of the capital stock of such association shall be eligible to serve as a director, and if any person whilst holding the office of director, shall transfer his stock, and thereby become the owner of less than five shares, his office as director shall from the date thereof, terminate, and the vacancy may be filled by the remaining directors by appointment, and the person so appointed shall serve until his successor is elected and qualified.

At least ten days' notice of the time and place of holding all elections of directors, except the first, shall be given to the stockholders, either by personal notice in writing or by publication in a weekly newspaper, if any is published in the county in which the association is located.

Stock payments. Sec 7. At least fifty per cent of the whole capital stock of the association shall be paid in before commencing business, as provided in section 4, and the residue shall be paid within six months thereafter, and may be required in such installments, within that period, as the board of directors may determine: If any person shall fail to pay any installment due on his capital stock when so required, the board of directors may proceed to collect the same by suit in any court of competent jurisdiction.

tion, or they may sell the stock of such delinquent stockholders at public auction, having given three weeks' notice of the time and place of such sale by publication in a newspaper published in the city, town, or county in which the association is located, and if no newspaper is published in such county, then in a newspaper published nearest thereto, to any person who will pay the highest price therefor, and not less than the amount due thereon, with the expenses of advertising and sale; and the excess if any shall be paid to the delinquent shareholder.

The capital stock of such association shall be deemed personal property and treated as such.

1. It may be suggested that strong reasons exist for holding that the acceptance of anything but money in payment of subscriptions to the capital stock of a banking association is illegal. No authority for such transaction is found in the statutes, and the nature of the business to be carried on seems to forbid them. *Coddington v. Canaday*, 157 Ind. 243.

Stock—Increase and reduction. Sec. 8. The capital stock of such association may be increased by a vote of the shareholders owning two-thirds of the capital, a certificate of which shall be made and recorded on the records of the board of directors, and a certified copy thereof, with the signatures of the president and cashier of the association, shall be filed in the office of the secretary of state; but such increased stock shall be paid in at the time it is subscribed. And whenever such association proposes to reduce its capital stock, notice thereof must first be given to the shareholders and depositors by publication for three weeks successively in some weekly newspaper of general circulation printed and published in the county where the business of such association is conducted. Such notice shall name a time and place when and where the matter of reduction shall be acted upon. At the time and place named such capital stock may be reduced by a vote of two-thirds of the shareholders present representing two-thirds of the capital stock at such meeting voting in favor thereof, and by the written assent of a majority of all the directors. No such reduction shall be made until the [bank commissioner] auditor of state has been notified before the call for such meeting by such association and of the proposed reduction; and when so notified he shall cause an examination to be made imme-

diately of the books, property, effects and liabilities of such association, and may also examine its officers under oath. From the result of such examination he shall determine the value, in his judgment, of such property and effects above the debts and liabilities and certify the same in writing, and the amount so certified shall be presented and read to the shareholders present at such called meeting. No reduction will be allowed which will reduce the capital of the association below the amount so certified by the auditor of state, neither shall the capital stock be reduced at any time below the amount fixed by this act. (As amended, Acts 1881, p. 88.)

1. There can be no voluntary withdrawal of any portion of the assets of a bank, where the effect of such withdrawal will be to impair the capital stock, or endanger the security of its creditors. *McCann, Trustee, v. First Natl. Bank*, 131 Ind. 95.

Surplus—Dividends. Sec. 9. It shall be the duty of the board of directors to set apart and retain ten per centum of the annual net profits of the business of such association as a surplus fund until the same shall amount to twenty-five per centum of its capital stock.

The directors of any association may semi-annually declare a dividend of so much of the net profits of the association as they shall judge expedient, first deducting therefrom the one-tenth part thereof to be carried to the surplus fund. But neither the association nor any member thereof, shall, during the time it shall continue its banking operations, withdraw or permit to be withdrawn any portion of its capital, either in the form of dividends or otherwise. And if losses shall at any time have been sustained by any such association equal to or exceeding its undivided profits then on hand, no dividend shall be made, and no dividend shall ever be made by any association while it shall continue its banking operations to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts. And all debts due to any association on which interest is past due for a period of six months, unless the same shall be well secured, shall be considered bad debts within the meaning of this act.

List of stockholders. Sec. 10. The president and cashier of every such association shall cause to be kept at

all times a full and correct list of the names and residences of all shareholders, in the association, and the number of shares held by each in the office where its business is transacted, and such list shall be subject to the inspection of all the shareholders and creditors of the association, and the officers authorized to assess taxes under the authority of the state.

Liquidation. Sec. 11. Any such association may go into liquidation and be closed by a vote of its shareholders owning two-thirds of its stock. And when such vote shall be taken, it shall be recorded on the record book of the association and notice thereof given by publication for at least three successive weeks in a weekly newspaper published in the city, town or county where the association is located, if any, and if there be no such newspaper published in the county then the notice shall be published in a weekly newspaper nearest thereto. And after such vote shall be taken, no dividend or profits or of the capital shall be made to the stockholders, nor any part of the capital withdrawn by, nor paid to the shareholders in any manner whatever, until all the debts and liabilities of the association of every kind are fully paid.

Purchase of real estate. Sec 12. It shall be lawful for any association organized under this act, to purchase, hold and convey real estate as follows:

First. Such as shall be necessary for its immediate accommodation in the transaction of its business.

Second. Such as shall be mortgaged to it in good faith by way of security for debts.

Third. Such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

Fourth. Such as it shall purchase at sales, under judgments, decrees or mortgages held by such association, or shall purchase to secure debts due to said association.

Such association shall not purchase or hold real estate in any other case or for any other purpose than as specified in this section, nor shall it hold the possession of any real estate under mortgage, nor hold the title and possession of any real estate purchased to secure any debts to it for a longer period than five years.

1. The purchase of real estate by a banking association, except for use in its business, and under certain special circumstances, is expressly prohibited by this section. *Coddington v. Canaday*, 157 Ind. 243, 61 N. E. Rep. 567.

Liability of stockholders. Sec. 13. That the shareholders of each bank or association formed under the provisions of this act shall be individually liable to an assessment of not to exceed one hundred per centum (100%) of the par value of their respective shares of capital stock, and in addition to all assessments for unpaid subscriptions for capital stock or parts thereof, same to be levied and collected as hereinafter provided when such assessment is required for the payment of the debts or liabilities of such bank or association or to restore the capital stock thereof. Any person holding shares of such stock as trustee or in any other fiduciary capacity shall not be individually liable as herein provided but the person for whom such trustee or other person is so holding in such fiduciary capacity, his estate or assets of such person or estate shall be liable for such assessment. Whenever the capital stock of such bank or association is reduced by impairment or otherwise below the amount required by law or by its articles of association and by certificate of increase or decrease of capital stock, as the case may be, the board of directors shall, at a called meeting or any other meeting, the purpose of which shall have been stated in writing and notice duly served upon said directors as hereinafter provided more than five (5) days prior to the holding of such meeting, make assessment upon each and every such owner or holder of such stock of such association for an equal amount on each and every share of such stock so owned or held and in an amount or to the extent of not exceeding one hundred per centum (100%) of such capital stock, as may be required for such purposes, and the board of directors of such association shall immediately upon making such assessment give notice thereof, to each and every such stockholders in writing personally or by registered letter at his last and usual place of residence as disclosed by the books and records of such association setting forth in such notice the amount of such assessment and the time given within which to pay such assessment which time for such payment shall not be less than

thirty (30) days nor more than sixty (60) days, and such board of directors failing to make and collect such assessment or failing to carry out the conditions of this act, the [bank commissioner] auditor of the State of Indiana or any one duly authorized by him or any other person or persons duly authorized by law to supervise banks and banking within and for the State of Indiana and for failure or neglect of such [bank commissioner] auditor or supervisor to carry out the provisions of this act the Attorney-General of the State of Indiana shall make such assessment as heretofore provided and collect the same as hereinafter provided or institute proceedings for the appointment of a receiver for such association and wind up its affairs as provided by law and such assessment when so made shall constitute a lien on such stock to the amount and extent of any and all unpaid balance due on such assessment including the necessary costs incurred as heretofore or hereinafter provided and which lien shall attach and be binding until enforced but not exceeding a period of two (2) years, and which assessment may be collected and such lien may be enforced by said association either by an action at law or by a refusal to transfer such stock on the books of such association or by sale of such stock as hereinafter provided.

If any stockholder or other person aforesaid shall fail, neglect or refuse to pay any balance due on subscription for capital stock or the amount duly assessed upon such capital stock and as set out in the notice heretofore specified, within sixty (60) days from the day of giving such notice, the board of directors of such association is hereby authorized and directed to sell such stock, or any part thereof, to the highest bidder at public or private sale as such auditor or other supervisor of banks may direct, after giving thirty (30) days' notice by one (1) publication in a newspaper of general circulation published in the town or city in which such bank may be located, or if none be so published then by publishing such notice in such paper published in a city or town next adjacent thereto giving the place, time, terms and conditions of such sale to be made. Such stock, before such sale, shall be appraised or re-appraised if necessary, by the [bank commissioner] auditor of the State of Indiana or such other person as

may have supervision of such banks and associations within and for the State of Indiana and such sale shall be for cash and for not less than the full appraised value thereof as shown by such appraisement, or re-appraisement. The proceeds of such sale or any amount derived from such assessment shall be applied by the directors of such association as follows:

First: To the payment of the costs and expenses of such sale including attorneys' fees when such services are required.

Second: To the payment or reduction of any amount assessed and unpaid on any outstanding capital stock, to make good such impairment of capital stock.

Third: To the payment or reduction of any amount due thereon for unpaid subscription for such capital stock.

Fourth: Any residue remaining after paying the amounts aforesaid shall be paid at once to the owner of such stock as disclosed by the books of such association. (As amended, Acts 1919, p. 832.)

The original of this section was amended by Acts 1895, p. 202.

1. The statutory liability of the stockholder is created exclusively for the benefit of the corporate creditors. It is the creditors of the bank who are authorized under the statute to maintain the action, and the assignee of an insolvent bank can not maintain an action to enforce the double liability of the shareholders. *Runner, Assignee, v. Dwiggins*, 147 Ind. 238.

[Acts 1919, p. 832.]

Legalization. Sec. 2. All sales of stock heretofore made or assessments collected under this act and as set out in section 13 of an act entitled "An act to authorize and regulate the incorporation of banks of discount and deposit in the State of Indiana", approved February 7, 1873, and acts amendatory thereto, the same being section 3341 of Burns' Revised Statutes of 1914 and in substantial compliance therewith and wherein the proceeds of sale were applied to the reduction of or making good an impairment of capital stock or paying the debts of such association are hereby legalized and made binding upon all the parties who had notice of such sale.

[Acts 1873, p. 21.]

What transfers void. Sec. 14. All transfers of notes, bonds, bills of exchange, and other evidences of debt owing

to any association, or of deposits to its credit; all assignments of mortgages, sureties on real estate, or of judgments or decrees in its favor, all deposits of money, bullion, or other valuable things to its use, or for the use of any of its shareholders or creditors, and all payments of money to either, made after the commission of an act of insolvency, or in contemplation thereof, with a view to prevent the application of its assets to the proper payment of its just liabilities, or with a view to the preference of one creditor to another shall be utterly null and void.

1. Assignments or transfers of evidences of indebtedness by an insolvent bank, with a view to preferring one creditor to another, are utterly null and void under this section. A creditor taking such assignment in violation of the terms of this section gets no shadow of title. The statute operates upon the creditor as well as upon the bank. *Brighton et al. v. White*, 128 Ind. 320, 27 N. E. Rep. 620.

2. The collection of notes assigned in violation of this section may be enjoined. *Taylor v. Canaday, Receiver*, 155 Ind. 671.

3. Where a loan is made upon agreement that the debtor is to assign certain notes as collateral security, an assignment of the notes in pursuance of such agreement, but after the debtor became insolvent, is not void, as being in violation of this section. *Harris v. Randolph County Bank*, 157 Ind. 120.

Number of directors. Sec. 15. The number of directors in any such association shall be not less than five. The number of directors above five may, from time to time, be fixed by the by-laws of the association. A majority of such directors shall be citizens of this state. (As amended, Acts 1919, p. 577.)

Annual statement. Sec. 16. It shall be the duty of the president and cashier of every association organized under this act, to annually make out a sworn statement of the financial condition of such association and cause the same to be published for two weeks in a newspaper printed and published in the county where such association has its principal place of business, if a newspaper be printed in such county. If no paper be printed in such county, then they shall cause such statement to be published in a newspaper printed nearest to the place where such association has its principal office.

Penalties. Sec. 17. Any person who shall fail or refuse to comply with the provisions of section sixteen of this act shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum not less than twenty-five dollars, and not exceeding one thousand dollars.

Reports. Sec. 19. That every association formed under the provisions of this act shall make to the [bank commissioner] auditor of state not less than five reports during each and every year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president, cashier, or other managing agent of such association, which report shall exhibit in detail and under appropriate heads, the resources and liabilities of the association at the close of business on any past day to be by him specified, and shall transmit such report to the said [bank commissioner] auditor within five days after the receipt of a request or requisition therefor from him; and the report of each association above required, in the same form in which it is made to the [bank commissioner] auditor, shall be published in a newspaper published in the place where such association is established, or, if there be no newspaper in the place, then in one published nearest thereto in the same county or an adjoining county, at the expense of the association, and such proof of publication shall be furnished as may be required by the said [bank commissioner] auditor. And the said [bank commissioner] auditor shall have power to call for special reports from any particular association whenever in his judgment the same shall be necessary in order to a full and complete knowledge of its condition. Any association failing to make and transmit any such report shall be subject to a penalty of one hundred dollars for each day after five days that such bank shall delay to make and transmit any such report as aforesaid, to be recovered in any court having jurisdiction in an action instituted by the [bank commissioner] auditor of state on the relation of the State of Indiana, and when so recovered shall be placed in the treasury of the state on account of the general fund.

CHAPTER IV.

LOAN, TRUST AND SAFE DEPOSIT COMPANIES.

[Acts 1893, p. 344.]

Organization. Section 1. That any number of persons not less than ten (10) may associate themselves and become incorporated for the purpose of transacting business as a loan and trust and safe deposit company, upon complying with the provisions of this act; and any company so formed, and its successors, shall be entitled to the rights and privileges and subject to the duties and obligations herein prescribed, and shall have perpetual succession.

Articles of association. Sec. 2. Said corporators shall make and subscribe articles of association, setting forth: First, the name of the corporation; second, the amount of capital stock, and the number of shares into which the same is to be divided; third, the name and residence of each of said corporators and the number of shares and amount of capital stock respectively by them subscribed; fourth, the names, residence and number of directors and their terms of office, respectively, as hereinafter required; fifth, the time of the commencement of the corporation; sixth, the date on which the annual election of directors of such corporation shall be held, the said articles of association having been made and signed shall be filed within ten days in the office of the secretary of state, who shall transmit to said corporators a certified transcript of the same, and the same shall be taken as evidence, in all courts and places, of the act of organization of said corporators and as a compliance with the provisions of this act in that behalf.

Capital stock. Sec. 3. The amount of the capital stock or any such corporation where its office is located in a city of over 50,000 inhabitants, shall not be less than one hundred thousand dollars (\$100,000); in cities of between twenty-five thousand (25,000) and fifty thousand (50,000) inhabitants, not less than fifty thousand dollars (\$50,000), and in cities of less than twenty-five thousand (25,000)

inhabitants, not less than twenty-five thousand dollars (\$25,000), to be divided into shares of one hundred dollars (\$100) each, which shall be payable at such times and in such amounts as the board of directors shall order; but the same may be increased at any time by a resolution of two-thirds (2-3) of the directors to any amount not exceeding two million dollars (\$2,000,000): Provided, In case of any such increase of stock, the preference shall be given to the then existing stockholders of taking such additional stock pro rata before the same is offered to persons who are not stockholders. (As amended, Acts 1899, p. 503.)

[Acts 1905, p. 199.]

Reduction of capital stock. Sec. 1. That the capital stock of any loan and trust and safe deposit company may be decreased at any time provided the board of directors shall pass a resolution declaring that such decrease is advisable and calling a meeting of the stockholders to take action thereon; the meeting shall be held upon such notice as the by-laws provide, and in the absence of any such provision upon ten days' notice given personally or by mail, and provided further that no reduction of the capital stock of any such company shall be made until the [bank commissioner] auditor of state has been notified before the call for the meeting of stockholders to consider the proposed reduction. When so notified he shall cause an examination to be made immediately of the books, property effects and liabilities of such corporation and may also examine its officers and employes under oath. From the result of such examination he shall determine the value, in his judgment, of such property and effects above the debts and liabilities for this purpose, not considering capital stock as a liability, and certify the same in writing, together with his consent or refusal to consent to such reduction; and the amount so certified shall be presented to and read to the stockholders present at such meeting. It shall require the vote of three-fourths of the stockholders to authorize such reduction. No reduction will be allowed which will reduce the capital stock below the amount certified and consented to by the [bank commissioner] auditor of state, neither shall the capital stock of any such corporation

whose office is located in a city of over fifty thousand (50,000) inhabitants be reduced at any time below one hundred thousand dollars (\$100,000), nor that of any such corporation whose office is located in a city of between twenty-five thousand (25,000) and fifty thousand (50,000) inhabitants be below fifty thousand (\$50,000) dollars, nor that of any such corporation whose office is located in a city of less than twenty-five thousand (25,000) be below twenty-five thousand (\$25,000) dollars.

Legalizing reduction of capital stock. Sec. 2. The reduction of its capital stock heretofore made by any loan and trust and safe deposit company is hereby fully legalized, provided such reduction was approved or authorized at a regular annual meeting of the corporation where 75 per cent. of the stock of the corporation was represented and where such reduction was approved or authorized by the unanimous vote of all the stock represented, and provided further that the [bank commissioner] auditor of state after an examination of the affairs of such corporation as provided in section 1 herein shall have consented to such reduction, and provided also that a notice of such reduction of capital stock shall be published for three successive weeks in a daily or weekly newspaper, published in the city or town where such loan and trust and safe deposit company is located, and certificate showing that the capital stock has been reduced and acknowledged by a majority of the board of directors before some officer authorized to take acknowledgments of deeds, shall be filed in the office of the secretary of state and a duplicate thereof filed and recorded in the miscellaneous record in the recorder's office of the county where the principal office of such corporation in this state is located.

[Acts 1893, p. 344.]

Stockholders' liability. Sec. 4. The stockholders in such corporation shall be individually liable, in addition to their capital stock, in a sum equal to the amount of the same for the payment of any sum which shall at any time remain unpaid, for the satisfaction of any debt or liability which may at any time remain unpaid after the capital stock

of such corporation and all its assets may be or shall have been exhausted.

Payment for stock. Sec. 5. No such corporation shall be authorized to transact any business, or exercise any powers as such, until the whole of its capital stock, where the same does not exceed one hundred thousand dollars (\$100,000), shall have been subscribed and paid in. (As amended, Acts 1899, p. 503.)

Directors. Sec. 6. All the corporate powers of such company shall be exercised by a board of directors of not less than six (6) and such officers and agents as they shall elect or appoint. The number of directors above six (6) may from time to time be fixed by the by-laws of the company. A majority of such directors must be citizens of this state, and each director must own at least ten (10) shares of the capital stock. The articles of association shall state the names and places of residence of the first board of directors; and in case any of the persons so named shall not become stockholders to the amount required to qualify, or if he shall fail or refuse to qualify from any cause, the directors who shall so qualify may elect qualified stockholders to fill such vacancies, and thereafter, at each annual meeting of the stockholders, the directors shall be elected to serve one (1) year, and until their successors are elected; Provided, That if the amount of the capital stock of any such company shall not exceed fifty thousand dollars (\$50,000) any stockholder who owns at least five shares of the capital stock, and who is otherwise qualified, shall be eligible to the office of director of such company. It shall be the duty of the board of directors before the payment of any dividend to stockholders to set apart and retain in its surplus account not less than ten per cent of the net profits of the business of such corporation since its last preceding dividend, until such surplus shall amount to twenty-five per cent of its capital stock. After setting apart the portion of the current net profits above required the directors of such corporation may declare a dividend of so much of the remaining undivided profits of the corporation as they may deem expedient. But neither the corporation nor any member thereof, shall, during the time it shall continue its bank-

ing operations, withdraw or permit to be withdrawn any portion of its capital, either in the form of dividends or otherwise. And if actual losses shall be sustained at any time by any such corporation which operate to reduce its surplus below the requirement as herein provided no dividend shall be paid until the surplus as thus provided shall first have been restored. (As amended, Acts 1921, p. 42.)

The original of this section was amended by Acts 1907, p. 109, and 1917, p. 36.

Annual election. Sec. 7. The annual election shall be held at the office of the company, upon a day to be fixed by the articles of association, and notice of which meeting shall be given by a publication at least ten (10) days prior to said date in a public newspaper printed and published at the county seat of the county in which such company has its principal place of business. Any vacancy in the office of director may be filled by the board until the next annual election.

Officers, election, bond. [Sec. 8. The board of directors at their annual meeting shall elect from their own number a president and one or more vice-presidents, and they shall also appoint a secretary and such other officers as they may find necessary to the transaction of the business of the company. They shall define the general powers, authority and duties of such officers by by-laws or resolutions. No president, vice-president, treasurer, or secretary, or other active officer of such company shall enter upon the discharge of his duties until he shall have executed a bond to the company conditioned for the honest and faithful discharge of his duties in such sum and with such surety or sureties as may be approved by the board of directors, nor until such bond, so approved, has been filed in the office of and approved by the bank commissioner of the State of Indiana; Provided, however, Such individual bond shall not be required of any such officer if a blanket bond covering all the active officers and employes of such company in an amount and with a surety or sureties approved by the board of directors shall have been filed in the office of and approved by said bank commissioner. A fee of one (\$1.00) dollar for each bond filed shall be collected

by the bank commissioner for the use and benefit of the State of Indiana. (As amended, Acts 1921, p. 42.)

Statement filed with (bank commissioner) state auditor. Sec. 9. As soon as any such corporation shall have properly organized by filing its articles of association, and shall have elected its general officers, and shall have paid into its treasury its capital as provided in section five (5) of this act, the board of directors, including the president and secretary, shall make out a statement which shall be verified by the directors in person, and certified by the secretary, under the seal of the corporation, in which the fact shall be stated that the corporation has organized and elected officers, and that the cash capital has been paid in as required by section 5 of this act, and is in the possession of the corporation, and shall file the same with the [bank commissioner] auditor of state, and said [bank commissioner] auditor shall thereupon deliver to such corporation his certificate, stating that the fifth section of this act has been complied with, by the organization of such corporation and the payment of the capital as required therein, and said certificate shall be sufficient evidence in all courts, and to all persons, of the authority of said corporation to perform the duties and assume the liabilities provided in this act. (As amended, Acts 1899, p. 503.)

Powers. Sec. 10. Any such corporation so organized and authorized to transact business shall have power and authority:

First. To acquire, purchase, own, hold, use and improve and for that purpose to mortgage, lease, sell and convey such real estate and personal property as may be necessary for the convenient transaction of its business, and for the use and occupation of its officers, agents and employes, and for the safe keeping of its assets, deposits and property held in trust. Any estate, or interest in real estate, which such corporation shall acquire under or by virtue of the foreclosure of any deed of trust, mortgage or other security, or by the compromise, compounding or settlement of any obligation or security, or otherwise, in the course of its legitimate business, whether as owner or trustee, it may continue to own, hold, use, occupy, lease, bargain,

sell and convey the same as the directors may deem best for the interests of such company, or of the particular estate or trust to which the same belongs; and to that end it may become a purchaser at any foreclosure sale, or sale under decree or judgment, to which it is a party as trustee or otherwise, but no part of its capital, accumulations, deposits, trusts, funds, property, or securities, owned or held by such company in trust or otherwise, shall be invested in real estate, except as herein authorized, unless the same is done under and by virtue of a particular contract, agreement, or other instrument which shall confer a special power and authority so to do, and then only with, and to the extent of the money or funds thereby provided and belonging to such particular trust; and for the general transaction of its business to make and deliver, and in like manner to accept and receive, all necessary and proper deeds, conveyances, mortgages, leases and other contracts and writings obligatory and to have and exercise all necessary rights, franchises, muniments, estate powers and privileges necessary to that end, and such corporation is authorized to loan money and funds, and to secure such loan by mortgage; and shall have power to sell and assign such mortgages and other securities of such corporation, and to convert them into cash or other securities.

Second. To take, accept, and hold, by the order, judgment or decree of any court of record of this state, or of any other state, or of the courts of record of the United States, or by gift, grant, assignment, transfer, devise, legacy or bequest, from or with any public or private corporation or persons whomsoever, any real estate or personal property, upon trusts created in accordance with or which shall not conflict with the laws of this state, or of the United States, and to execute and perform any and all such legal and lawful trusts in regard to the same, upon the terms, conditions, limitations and restrictions which may be declared, imposed, established by, or agreed upon, in and by such order, judgment, decree, gift, grant, assignment, transfer, devise, legacy or bequest; to accept from and execute for, or on behalf of, trusts for married women, in respect to their separate property, real or personal, and antenuptial settlement, or otherwise to act as agent for

them in the management of such property; to act as agent for the purpose of transferring, issuing, registering or countersigning the certificates of stocks, bonds, coupon or other evidences of debt of any corporation, association, person, city, county, state or other authority, or to receive and pay out moneys in redemption of the bonds, coupons or other evidences of indebtedness of such public or private corporations, or persons, and to guarantee or become surety for the faithful performance of the duties of any guardian, executor, administrator, assignee, receiver, commissioner, or other trustee appointed by court.

Third. To take, accept and hold on deposit, or for safe keeping any and all moneys, bonds, stocks or other securities or personal property whatsoever, which any state, county, city or town officer, or any officer in any railroad or other corporation, public or private, or private person, shall be authorized or required by law or otherwise to deposit in a bank or other safe deposit.

Fourth. To act as trustee, assignee, or receiver in all cases where it shall be lawful for any court of record, officer, corporation, person or firm to appoint a trustee, assignee or receiver, and to be appointed, commissioned and act as administrator of any estate, executor of any last will and testament of any deceased person, and as guardian of the person or estate of any minor or minors, or of the estate of any lunatic, imbecile, spendthrift, habitual drunkard or other person disqualified or unable from any cause to manage his estate; and it shall and may be lawful for the circuit or probate court of any county in this state in which any such corporation may be established or other court of record having jurisdiction of the estates and wills of decedents, or of the persons or estates of minors, or of other persons under guardianship, either within or without this state, to appoint and commission any such corporation which holds the proper certificate of qualification from the proper authority provided by law showing that it is entitled to transact business in this state as the executor of any last will and testament, or as trustee of any trust under any will or as the administrator of the estate of any decedent, or as the guardian of the person and estate of any minor, or of the estate of any imbecile, lunatic, spendthrift, habit-

ual drunkard, or other person disqualified or unable from any cause, to manage his or her estate, in all cases where under the laws of this state such court could lawfully appoint and commission any natural person as such executor, administrator, guardian or trustee; and in all cases no bond shall be necessary to enable such corporation to accept such appointment or trust.

Fifth. To act as the agent or attorney in fact for any public or private corporation, person or association of persons in the management and control of real estate or personal property, its sale or conveyance, in the negotiation of and sale of mortgages or other securities, the satisfaction and discharge of record of such mortgages or other securities, the collection of rents, payment of taxes and generally to act for and represent corporations, or persons, under powers and letters of attorney or as agent in all respects as a natural person could do.

Sixth. The directors of any such corporation shall have discretionary power to invest all moneys received by it on deposit or in trust in any such personal securities as are not hereinafter expressly prohibited; and it shall be held responsible to the owners, or cestui que trust, of such moneys for the validity, regularity, quality, value and genuineness of all such investments and securities at the time the said investments are so made, and for the safe keeping of the evidences and securities thereof, but if any special direction, agreement or trust is imposed upon, made or conferred in and by the order, judgment or decree of any court, or by the terms and conditions of any last will and testament, or other document, contract, deed, conveyance or other written instrument, as to the particular manner in which, or the particular class or kind of securities, funds or property, whether real or personal, the same shall be invested in, then the said corporation shall follow and carry out such order, judgment, decree or other appointment, contract, deed, conveyance or other written instrument, and in such case such company shall not be held liable or responsible for any loss, damage or injury which may occur or be incurred by any person or cestui que trust by reason of its performance of such trust as aforesaid.

Seventh. It shall and may be lawful for any trustee of any trust estate now existing, or which may hereafter exist

or be credited [created] and whether before or after acceptance thereof, and whether the same has been or shall be created or conferred by any will or testament, or by contract, conveyance, deed of trust, or agreement, whatsoever, to surrender and resign such trust in favor of any such corporation organized and doing business under this act which will accept the same, and to convey and deliver to such corporation all the property and assets of and pertaining to the said trust, and subject to all unexecuted trusts imposed upon or pertaining to the same; upon the condition, however, that the grantor, cestui que trust, and all parties in any manner interested in the execution and performance of such trust, shall join in, sign, seal, acknowledge and deliver an instrument in writing, whereby they shall consent to the said transfer and the release and discharge of such original or acting trustee, and the appointment of such corporation as his successor as such, or if either of the parties to the original trust shall have deceased, or shall not join in the said written consent and transfer for any cause, or if the said original trust was created under a last will and testament, or under an order or decree of any court of record, then such transfer of such trust shall not be valid, except upon the judgment or decree of such court of record as would have jurisdiction of an action to remove the acting trustee of such trust and the full compliance with all the terms and conditions of such judgment or decree.

Eighth. For the faithful performance and discharge of any such trust, duty, obligation or service so imposed upon them, conferred and accepted by any such corporation, it shall be entitled to ask, demand and receive such reasonable compensation therefor as the same shall be worth, or such compensation as may have been or may be fixed by the contract or agreement of the parties, as well as any and all advances necessarily paid out and expended in the discharge and performance thereof, and to charge legal interest on such advances unless otherwise agreed upon; and any compensation or commission paid or agreed to be paid for the negotiation or security of any loan or the execution of any trust by any such loan and trust and safe deposit company shall not be deemed interest within the meaning of any law of this state, nor shall any excess there-

of over any rate of interest permitted by the laws of this state be decreed or held in any court of law or equity to be usury, and such compensation may embrace the employment of legal services when necessary for the protection of trusts.

Ninth. Such corporation shall exercise the powers and possess the privileges conferred on banks by the laws of this state and all powers properly incidental thereto or which may be necessary or usual in carrying on the general business of banking, subject to the restrictions imposed by the laws of this state relative to a general banking business; and shall have the power and authority to purchase and hold, for the purpose of becoming a member of a federal reserve bank, so much of the capital stock thereof as will qualify it for membership in such reserve bank, pursuant to an act of Congress, approved December twenty-three, nineteen hundred and thirteen, entitled the "Federal Reserve Act"; to become a member of such federal reserve bank, and to have and exercise all powers, not in conflict with the laws of this state, which are conferred upon any such member by the federal reserve act; to discount and negotiate promissory notes, drafts, acceptances, bills of exchange and other evidences of debt; to receive deposits subject to check, time and savings deposits; to accept for payment at a future date drafts drawn upon it; to issue letters of credit authorizing the holders thereof to draw drafts on it or its correspondents at sight, or on time, not exceeding one year; to buy and sell foreign exchange, coin and bullion; to act as agent to buy and sell foreign and domestic transportation; to solicit and write insurance as agent for any insurance company other than life insurance companies authorized to do business in this state: Provided, That no loan or trust company shall demand that any person, firm or corporation; being a borrower from such loan or trust company, place any insurance of any kind with such loan or trust company; and to rent and lease receptacles for safe deposit of personal property. (As amended, Acts 1921, p. 42.)

1. A foreign trust company can not act in another state as a trust without complying with the laws which regulate trust companies in such state. 5 Cyc. 613; *Farmers' Loan and Trust Co. v. Lake St. El. R. Co.*, 173 Ill. 439, 51 N. E. 55.

Interest on deposits. Sec. 11. On any sum of money not less than one hundred dollars (\$100) which shall be collected or received by any such corporation in its capacity of executor, administrator or guardian, or upon any deposit under any order of any court of record, an interest shall be allowed by such company of not less than at the rate of three (3) per cent. per annum in all cases where such money shall have remained in the possession of such company for over six months, for the period of such excess, and which interest shall continue after such six months until the said money shall be duly accounted for and paid over; and if the annual income of any minor or other person for whose estate any such company shall be guardian or trustee, shall exceed the sum allowed for, or which may be necessary for the support, maintenance and education of such ward, such surplus income shall be accumulated by said company for the benefit of such infant, by adding annual interest on such surplus as a new principal of not less than the rate aforesaid.

1. Where a trust company which is the trustee of a trust fund uses all or a part of such fund in its own business it is chargeable with the legal rate of interest thereon, though it issue to itself as such trustee its own certificate of deposits bearing a rate of interest less than the legal rate. 19 Am. & Eng. Ency. of Law, p. 481 (2d ed.); *St. Paul Trust Co. v. Kittson*, 62 Minn. 408.

2. The authorities are uniform in holding that if an executor or administrator employs the funds of the estate in his own business or for his own purposes, he will be charged with interest thereon. *Johnson v. Hedrick*, 33 Ind. 129.

Limit as to business. Sec. 13. No such corporation shall engage in any mercantile, manufacturing or other business, except such as is expressly authorized, nor shall it loan its funds, moneys, capital, trust funds, or other property whatsoever, to any director, officer, agent, or employe thereof, nor shall any such director, officer, agent or employe become in any manner indebted to said corporation by means of any overdraft, promissory note, account, endorsement, guaranty, or other contract whatsoever. (As amended, Acts 1921, p. 42.)

Control of courts over, commissioner to sell land, report. [Sec. 14. Any such corporation shall be subject at all times to the further orders, judgments and decrees of any court of record from which it shall have accepted any trust, appointment or commission as to such trust, and shall render to such court such itemized and verified accounts, statements and reports as may be required by law, or as such court shall order in relation to such particular trust, and every company organized and existing under the provisions hereof shall be authorized to act as commissioner for the sale of real estate upon the appointment of any circuit, superior or probate court in the State of Indiana, and to serve as such commissioner, without being required to give any bond, nor shall any company organized as aforesaid be required to give any bond when acting as administrator, guardian, executor, trustee, receiver or in any other fiduciary capacity, in the sale of real estate. And in all cases where an individual acting as administrator, executor, guardian or in any other fiduciary capacity, is now authorized by law, to administer oaths, the secretary of any company, organized as aforesaid and acting in such fiduciary capacity is hereby authorized to administer such oaths, attested by the signature of the secretary of such company and the seal thereof.

It shall render to the [bank commissioner] auditor of state not less than five reports during each year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president and secretary of such corporation, and attested by the signature of at least three of the directors. Each such report shall exhibit in detail and under appropriate heads the resources and liabilities of the corporation at the close of business on any past day by him specified; and shall be transmitted to the [bank commissioner] auditor of state within five days after the receipt of any request or requisition therefor from him, and shall publish its financial statement in form as may be prescribed by the [bank commissioner] auditor of state, in a newspaper published in the county in which its place of business is located, and if none, then in any such newspaper as the [bank commissioner] auditor may direct. The

[bank commissioner] auditor of state shall also have power to call for special reports from any particular corporation whenever in his judgment the same are necessary in order to have a full and complete knowledge of its condition. (As amended, Acts 1913, p. 567.)

Illegal business. Sec. 16. If it shall appear to the said [bank commissioner] auditor of state, from any examination made, or from any report of any examination made, that said corporation has committed a violation of any of the provisions of this act, or of the law, or that it is conducting business in any unsafe or unauthorized manner, or in case it is insolvent, he shall, by an order under his hand and seal of office, addressed to such corporation, direct the discontinuance of such illegal or unsafe practices and conformity with the requirements, of any of the provisions of this act, and of the law, and with safety and security in its transactions; and whenever any such corporation shall refuse or neglect to make such report or account as may be lawfully required, after ten days' notice from said [bank commissioner] auditor of state, or to comply with any such order as aforesaid, or whenever it shall appear to said [bank commissioner] auditor of state that it is unsafe or inexpedient for any such corporation to continue to transact business, or that it is insolvent, he shall communicate the facts to the prosecuting attorney of the district within which such corporation has its chief office, who shall thereupon be authorized to institute such proceedings against any such corporation as are now or may hereafter be provided by law in case of insolvent corporations, or such other proceedings as the case may require.

Prohibition of the use of the word "trust"—Penalty. Sec. 18. All corporations not organized and transacting business under said act approved March 4, 1893, and whereto this is supplemental, and all persons or corporations doing the business of bankers, brokers, saving institutions, insurance corporations, building and loan associations or other corporations engaged in business in this state under any other act than the one aforesaid, are prohibited from using the word "trust" as a portion of the name or title of said bank, corporation, firm, partnership,

or association; and any violation of this prohibition committed by any person or corporation after the taking effect of this act, shall subject such party, person, corporation or association chargeable therewith to a penalty of fifty (\$50) dollars for each day during which it is committed or repeated; said penalty to be recovered in the name of the state on a suit brought by the attorney-general, whose duty it shall be to enforce the provisions of this section. (As amended, Acts 1899, p. 127.)

[Acts 1901, p. 189.]

Contents of report. Sec. 1. That every corporation doing business under the law of this state, entitled "An act to authorize the organization and incorporation of loan, and trust, and safe deposit companies, and defining their powers, rights and duties and other matters connected therewith," approved March 4, 1893, in rendering to the [bank commissioner] auditor of state the actual account of its condition, shall always state specifically the full amount of all its outstanding obligations incurred by reason of its guaranteeing or becoming surety for the faithful performance by any person of any duties whatsoever, and shall at the same time also state specifically the amount of premiums charged and received by it on such obligations as may then be in force. And in estimating at any time the condition of such corporation the [bank commissioner] auditor of state shall charge as liabilities, in addition to the full amount of the capital stock outstanding, all outstanding indebtedness of the corporation and a premium reserve equal to fifty per centum of the premiums charged by the corporation on all its obligations then in force on account of its guaranteeing or becoming surety for the performance by any person of any duties whatsoever.

Deposits, repayment. Sec. 2. Every corporation organized under the act described by its title in the preceding section, which, in the conduct of its business, may accept savings deposits, is hereby authorized and required to accept and hold such deposits under the same regulations as to the repayment thereof as are now prescribed by the law of this state for the repayment of deposits in savings banks.

[Acts 1913, p. 723.]

Liquidation of companies, petition. Section 1. That any loan and trust and safe deposit company organized under an act entitled "An act to authorize the organization and incorporation of loan and trust and safe deposit companies and defining their powers, rights and duties and other matters connected therewith," approved March 4, 1893, may upon petition of its owners holding eighty (80) per cent. of its capital stock go into voluntary liquidation. Said petition shall be filed with the [bank commissioner] auditor of State of Indiana; and upon the filing of said petition as aforesaid, said [bank commissioner] auditor of state shall cause to be made an examination of the business of said company by the banking department of his office.

If said [bank commissioner] auditor shall find from said examination that said company is solvent and has sufficient assets with which to pay all of its depositors and its other liabilities, he shall at once enter an order directing the officers of said company, without delay, to liquidate its business and to settle up all of its affairs by paying first, all of its depositors in full; and second, after all of its other liabilities are fully liquidated and paid they shall pay out and distribute all the remaining assets of said company share and share alike to the owners of its capital in proportion to the shares of its capital stock of said company respectively owned by them.

Trust property and funds. Sec. 2. If said company shall hold any property real or personal in trust for any individual or corporation, it shall turn said trust property over to the owner thereof or convey the same under the direction of the owner thereof to some other loan and trust and safe deposit company doing business in the same county in which is situated the liquidating company.

And if said company shall be at the time acting as administrator, guardian, receiver or in any fiduciary capacity, the officers of said company shall transfer all of such trust business to some other loan and trust and safe deposit company, under the direction and orders of the circuit court of the county where the company is situated.

Surrender of charter. Sec. 3. When said loan and trust and safe deposit company shall have so liquidated its affairs as in this act provided, its officers shall at once surrender its charter to the secretary of state who shall cancel the same, and said charter shall thereafter be void and of no legal effect.

CHAPTER V.

PRIVATE BANKS.

[Acts 1907, p. 174.]

Private banking. Section 1. That every partnership, firm or individual transacting a banking business within this state, or using the word bank, banker, or banking in connection with his or its business, shall be subject to the provisions of this act.

Assets—Investment. Sec. 2. It shall be unlawful for any partnership, firm or individual to transact a banking business in this state, or to advertise as a banker unless said partnership, firm or individual has at least ten thousand (\$10,000.00) dollars of cash capital invested in well secured notes in state or municipal bonds, or in bank building, furniture or fixtures, and shall be set apart for the security of the creditors of said bank: Provided, That not more than one-third of the capital of such firm, partnership, or individual fixed in the detailed statement of such partnership, firm or individual shall be invested in real estate: And provided further, That if such firm, partnership or individual shall have any part of the capital invested in real estate, such real estate shall be conveyed to the bank in the name thereof, by a legally executed deed duly signed and acknowledged by the members of such partnership, firm or individual and their respective wives, giving a particular description of the real estate and its true value, and conveying a good and sufficient fee simple title, and which deed shall be duly recorded within the time provided by law for the recording of deeds in the recorder's office of the county where the land is situated, and a copy thereof filed with the [bank commissioner] auditor of state: Provided, That no part of the capital, surplus or undivided profits of said bank, except as aforesaid, may be invested in real estate except it be taken in settlement of a doubtful claim, or purchased at judicial sale on a judgment or a decree of foreclosure in favor of said bank; and when so taken, it must be by deed made to such; and the president and cashier

of such bank are hereby empowered and authorized to execute good and sufficient deed or deeds therefor, in the name of such bank, upon proper order made therefor by the board of directors of such bank. All mortgages held by or to secure money loaned by the bank shall be satisfied of record upon the payment thereof, by a release or satisfaction of mortgage executed in the name of the bank by its president, vice-president or cashier. The capital stock of any such banking association may be increased by an agreement in writing signed by partners or shareholders holding two-thirds of its capital stock and paying into the bank in money the amount of said increase, which amount and a certificate by the cashier or manager of said bank of such payment, shall, within five days thereafter, be filed with the [bank commissioner] auditor of state. Its capital stock may be decreased, but at no time below ten thousand (\$10,000) dollars, upon written petition of its partners or stockholders holding two-thirds of its capital stock, filed with the [bank commissioner] auditor of state, who, after examination of the affairs of said banking partnership or individual bank, shall consent or refuse said petition as to him shall seem best, and such consent shall be indorsed upon said petition, and notice of such reduction of capital stock shall immediately be given for thirty (30) days in some newspaper published in the town where said bank is located, or, if none such is published in the town, then in one published at the county seat.

Statement. Sec. 3. Every partnership, firm or individual desiring to transact a banking business in this state shall, under oath, file with the [bank commissioner] auditor of state a full, complete and detailed statement of:

First. The name of the bank.

Second. A copy of the articles of copartnership and agreement, if a copartnership, under which the business of the bank is being, or is, to be conducted, which shall be executed and acknowledged by all the parties interested therein, and at least one of whom shall be at all times a resident of the State of Indiana. If a banking business is being or is to be transacted or carried on by an individual, such individual shall at all times, while in such banking business, be a resident of the State of Indiana, and the statement herein required shall so show.

Third. The county and city or town in which the bank is to be located, and the business carried on.

Fourth. The amount of the capital paid into the business and to be kept and maintained at all times in the business.

Fifth. That the aggregate responsibility and net worth of the individual members of such firm, partnership or individual is equal to an amount at least double the amount of the capital paid into such bank as herein provided.

Sixth. The names of the officers who are to manage the business of said bank.

The legislature has the power to compel private banks to make reports to Auditor of State. *State v. Richcreek*, 167 Ind. 217.

Certificates of stock. Sec. 4. Each individual, partnership or firm desiring to transact a banking business in this state shall issue certificates of stock to the respective individual or individuals forming said partnership, in an amount equal to the capital of said bank, which certificates of stock shall be deemed and considered the capital stock of such bank; and said bank in making any statement of the liabilities and assets of said bank, shall give the amount of its capital stock, its surplus and undivided profits as items thereof.

Fee—Capital paid in—Certificate. Sec. 5. Whenever, after the filing of the statement provided in section three (3) of this act and the payment to the [bank commissioner] auditor of state (of) a fee of one-tenth of 1 per cent. of such capital stock, and the filing with the [bank commissioner] auditor of state, the oath of some member of the partnership, firm or individual, that the capital has been paid in as provided for and in compliance with section three (3) of this act, then the [bank commissioner] state auditor shall, without unnecessary delay, issue to such partnership, firm or individual, a certificate authorizing such partnership, firm or individual to transact a banking business.

Posted list of owners—Changes—Notice. Sec. 6. There shall be posted in the room of every bank doing business under the provisions of this act, and in plain view

of its customers, a printed list of all the owners of, and parties interested in, such bank, and the statement that this is a private bank. Should the interest of any member of such partnership or firm, or of any individual doing a banking business under the provisions of this act, change, either by death, devise, or otherwise, then, and in that case the [bank commissioner] auditor of state shall be notified of such change, and the printed notice in the room of any such bank as herein provided shall be changed accordingly.

Reports—Publication—Penalty. Sec. 7. Every partnership, firm or individual transacting a banking business under the provisions of this act shall make to the [bank commissioner] auditor of state two reports during each and every year, according to the form which may be prescribed by him, verified by the oath or affirmation of the president, cashier or other managing agent of such bank, which report shall exhibit in detail the resources and liabilities of the bank at the close of business on any past day to be by him specified; and shall transmit such report to said [bank commissioner] auditor within five days after the receipt of a request or requisition therefor from him. At the same time that each of the above reports is made to the [bank commissioner] auditor of state, verified reports according to a form prescribed by said [bank commissioner] auditor, which form shall be as nearly as possible like that now or hereafter to be required of banks incorporated under the laws of Indiana, shall be published, at the expense of the bank, in a newspaper published in the place where said bank is located, or if there be no newspaper in the place where said bank is located, then in one published nearest thereto, in the same or an adjoining county. And the said [bank commissioner] auditor shall have power to call for special reports from any particular bank whenever, in his judgment, the same shall be necessary, in order to arrive at a full and complete knowledge of its condition. In no reports filed under this section shall the real or personal property of an individual or individuals owning said bank, except the title is in the bank, be permitted as an asset. Any bank failing to make and transmit and publish any such report required by this section, within five days after

the request is made therefor, shall be subject to a penalty of not less than one hundred dollars, or more than five hundred dollars, to be recovered in any court having jurisdiction in an action to be instituted by the [bank commissioner] auditor of state on the relation of the State of Indiana, and when so recovered shall be placed in the common school fund of the county where such bank is located.

Penalties. Sec. 9. Any person, firm or copartnership violating any of the provisions of this act shall be fined in any sum not exceeding one thousand dollars, to which may be added for the second offense imprisonment for any term not exceeding two years.

Property in trust. Sec. 10. Should any bank organized under the provisions of this act, or any owner or owners thereof, hold any property in trust for another, the fact of such trust, the general nature and character thereof, the acceptance of the same and the amount so held shall be set forth in an instrument to be executed by the trustee and acknowledged by him before a notary public. Within fifteen days after the execution of such an instrument it shall be recorded in the office of the county recorder of the county in which such bank is situated. Within thirty days thereafter the original instrument, together with the certificate of the county recorder, showing that it has been duly recorded, shall be filed with the [bank commissioner] auditor of state, with a record fee of one dollar for the state. Should such instrument not be so recorded and filed, and such bank should be wound up, either voluntarily or involuntarily, then the property so held in trust shall be considered a part of the assets of such bank, provided the remaining assets are not sufficient to pay in full the bona fide claims of all depositors. Until such claims are paid in full all persons shall be estopped from asserting, as against such depositors, any right, title or interest in and to the property so held in trust: Provided, however, That no forfeiture of property herein provided for shall be taken to excuse any such bank or any owner or owners thereof from any penalty hereinbefore fixed.

1. This section applies to notes and mortgages held in trust by banks. *Drudge v. Citizens' Bank of Akron*, 64 App. 217.

2. Conversion will not lie to secure the value of notes and mortgages held by a bank in trust, which were appropriated to the payment of depositors when the bank was dissolved. *Drudge v. Citizens' Bank of Akron*, 64 App. 217.

Depositor's lien. Sec. 11. The depositors in any such bank shall have a first lien on the assets of such bank in case it is wound up, to the amount of their several deposits. And for any balance remaining unpaid, such depositors shall share in the general assets of the owner or owners, alike, with general creditors.

Suits by and against—Service of process. Sec. 12. Any bank organized and doing business under the provisions of this act shall have the right to sue, and be sued, under the name under which such bank is authorized to transact its business. Service of summons or other process of court upon the officer or agent in charge of the business of such bank shall be good and sufficient service to give the court jurisdiction, and any judgment obtained against such bank shall be valid and binding against all the persons interested therein.

1. Private banks organized under the statutes of the state may sue and be sued, and a judgment recovered against such a bank binds all the persons interested in the bank. *New Amsterdam, etc., Co. v. New Palestine Bank*, 59 App. 69.

Loans to officers. Sec. 13. No bank organized under the provisions of this act, nor any of its officers acting for it, shall loan any of the funds of said bank in any amount exceeding thirty (30) per cent, of the capital stock of said bank to any officer or officers thereof.

Stay as to receiver. Sec. 14. Should the [bank commissioner] auditor of state make application for the appointment of a receiver for such bank, as in this act provided, the owner or owners thereof may, before the granting of such application, and the appointment of a receiver, stay the appointment thereof, or within five days after the appointment of a receiver, abate such appointment by filing with the court, or judge, before whom such application is pending, or that appointed such receiver, a bond with sufficient surety to be approved by the court, or judge, condi-

tioned that such owner or owners would, within twelve months thereafter pay each depositor of said bank in full.

Voluntary liquidation. Sec. 15. Any bank organized under the provisions of this act may, upon petition of its owners holding eighty (80) per cent. of its capital, go into voluntary liquidation. Said petition shall be presented to the court, or judge, or (of) the circuit court in which said bank is situated, and if said court or judge shall find that said bank and its owners have set apart sufficient assets to pay its depositors in full, the court or judge shall appoint a trustee to whom said assets shall be transferred. Said trustee shall give a bond for the faithful performance of his duties and shall proceed at once, under the direction of the court or judge to reconvert the assets into money and pay the debts. He shall as often as he has sufficient money to pay ten (10) per cent, or more dividend, distribute the same, and for his service the court or judge shall allow him such compensation as he shall deem to be just.

CHAPTER VI.

SAVINGS BANKS.

[Acts Extra Session 1869, p. 104.]

How organized. Section 1. That any number of persons being voters of this state, not less than seven nor more than twenty-one, who shall have been citizens of the county where they then reside for at least five years then next preceding, and who shall severally own unincumbered real estate therein worth at least five thousand dollars, exclusive of perishable improvements, may associate themselves together for the purpose of organizing and managing a savings bank in such county, in accordance with the provisions of this act, as a body politic and corporate.

1. The chief business of a saving bank is to receive deposits, invest them in certain classes of securities, specified in the statutes, and to pay to the depositors the amount due them, either in whole or in part, as they from time to time demand. It has no authority to do a general banking business, not even to engage in the business of discounting bank paper. *Bradee v. Warren Five Cents Savings Bank*, 127 Mass. 107, 34 Am. Rep. 351.

Certificate. Sec. 2. Such persons shall execute a certificate under their hands and seals in which shall be set forth—

First. The name assumed by such association.

Second. The name of the town or city in which the association is to be located, and its business carried on.

Third. The name, residence, occupation and postoffice address of each member of such association.

Fourth. A declaration that each member of such association will accept the responsibilities and faithfully discharge the duties of a trustee thereof.

Execution and recording of certificate. Sec. 3. Such certificate shall be executed in duplicate, and be duly acknowledged before the judge of the circuit court of the county wherein such association is located, which judge shall make diligent inquiry, and, if necessary, hear proof of the qualifications of the persons executing said certificate, and if satisfied that they are duly qualified as required by

the first section of this act, and are in all respects suitable persons to be entrusted with the management of a savings bank, he shall certify such acknowledgment and such facts as to the qualifications and fitness of said persons upon said certificate, one copy of which shall thereupon, within thirty days, be recorded in the office of the recorder of said county, and the other shall be filed in the office of the auditor of state, whereupon said persons and their lawfully appointed successors shall be authorized as a corporation to open and conduct a savings bank under the provisions of this act.

Forfeiture of rights. Sec. 4. Any savings bank so incorporated that shall not organize fully and commence business within one year after the filing and recording of said certificate, as provided in the preceding section, shall forfeit all its rights and privileges as such corporation.

First trustees. Sec. 5. The persons named in the certificate aforesaid shall be the first trustees of such corporations, and shall have the entire management and control of the affairs thereof, subject to the provisions herein contained and the laws of the state.

1. The trustees of savings banks are personally responsible for frauds and losses resulting from gross negligence and inattention to the duties of their trust. They must know the fundamental law controlling the bank, and can be excused only when, after taking due care to understand the provisions of the law, they honestly mistake them. *Marshall v. Farmers' Savings Bank*, 85 Va. 676, 17 Am. St. Rep. 84.

Vacancies. Sec. 6. Whenever any trustee shall die, resign, remove from the county where such savings bank is located, become insolvent or incapacitated for the discharge of his duties, or fail for nine successive months to attend the regular meetings of the board of trustees, or shall borrow, directly or indirectly for himself or any other person or persons, firm or firms, or corporation or corporations in which he is financially interested, any of the funds of such savings bank, or become surety for any borrower thereof, a vacancy shall thereby be created, and a successor shall be elected by the residue of the board of trustees by ballot, at any regular meeting thereof, or at a special meeting of which all the remaining members of the

board shall have notice: Provided, That the votes of the majority of the legal number of trustees of such bank shall be necessary for a choice of such successor, who shall possess all the qualifications required for the original trustees. (As amended, Acts 1901, p. 155.)

Judge appoints trustee—When. Sec. 7. In case of a failure of any savings bank to fill any vacancy in the board of trustees for three months after the same occurs, said judge shall, upon the written request of any two trustees, or of any five depositors in said bank, appoint a person, duly qualified, as hereinbefore provided, to fill the vacancy.

Certificate of fitness. Sec. 8. Every trustee, elected or appointed to fill a vacancy, shall, before he is authorized to enter upon his duties, procure from said judge a certificate of qualification and fitness, as provided in section three of this act, which certificate shall forthwith be recorded in the journal of the proceedings of such bank, and then be filed in the office of the [bank commissioner] auditor of state.

Officers and agents. Sec. 9. The trustees of every savings bank shall elect from their number a president, and one or more vice-presidents, and may also choose from their number or otherwise, such other officers or agents as they may deem expedient, to conduct the business thereof, which several officers shall hold their offices for the term of one year, and until their successors are chosen and qualified.

1. The treasurer of a savings bank is an officer of much more limited powers than the cashier of a commercial bank. The duties of the treasurer more nearly resemble those of the paying and receiving tellers of banks. *Commonwealth v. Reading Savings Bank*, 133 Mass. 16, 43 Am. Rep. 495.

By-laws. Sec. 10. The board of trustees of every savings bank shall have power, from time to time, to make such by-laws, rules and regulations as they may think proper, consistent with the laws of this state, for the election of officers, for prescribing their powers and duties and the manner of discharging the same, for the appointment and prescribing of the duties of committees, and generally for transacting the business of the corporation, and a copy of said by-laws, rules and regulations shall be transmitted to the [bank commissioner] auditor of state, who shall be notified of any amendment or change therein.

1. A by-law adopted after the deposit is made, and not made known or attempted to be made known to the depositor, does not bind the depositor. *Hudson v. Roxbury Inst. for Sav.*, 176 Mass. 522, 57 N. E. Rep. 1021.

Quorum. Sec. 11: A quorum of the board of trustees of any savings bank shall not be less than five of whom the president, or a vice-president, shall be one; but it shall be lawful for the trustees, in their by-laws, to provide for a larger quorum, and where such quorum shall be nine trustees or more, it may be composed without the attendance of a president or a vice-president; but when the number of trustees is fifteen or more the quorum shall be not less than seven, with a president or vice-president in attendance.

Reduction of number. Sec. 12. It shall be lawful for the trustees of any savings bank, by a resolution, to be incorporated in their by-laws, to reduce the number of the trustees as provided in section one, to a number not less than the minimum prescribed therein, and thereafter, as vacancies occur, the same shall not be filled until the number is reduced to such minimum, or to such other number as the board in such resolution shall designate.

Meetings. Sec. 13. Regular meetings of the board of trustees shall be held as often as once in three months, and they may provide in their by-laws for more frequent regular meetings and for the calling of special meetings. Minutes of the proceedings of each meeting shall be kept in a record provided for that purpose.

Officers' bonds. Sec. 14. The trustees of every savings bank shall require from the officers and agents of the corporation such security for their fidelity and the faithful performance of their duties as they shall deem necessary, and every officer or agent, of such savings bank who, by the rules and regulations thereof is to have direct custody or control of the funds thereof, shall, before entering upon his duties, execute, with one or more freehold sureties to be approved by said judge, an undertaking in such sums as said judge may determine, payable to the State of Indiana, for the use of such savings bank or any creditor thereof, or depositor therein, conditioned for the faithful discharge of his duties as such officer or agent, and for the pay-

ment of any loss or damage occasioned by his wilful misconduct or neglect, which undertaking shall be filed in the office of the clerk of the circuit court of the county wherein such bank is situated.

Perquisites forbidden. Sec. 15. No trustee of any savings bank shall, directly or indirectly, receive for his services or otherwise, any pay or emolument except as hereafter provided, and no trustee, officer or agent of any savings bank shall directly or indirectly, for himself or as the partner or agent of others, borrow any of the funds of such savings bank or its deposits, or in any manner use the same, except to pay necessary expenses, or to make investments, or to deposit for safety, as directed by the board of trustees, nor shall any trustee, officer or agent of any savings bank be an indorser or surety for loans to others, nor in any manner to be an obligor for moneys loaned by such savings bank, nor shall any such trustee, officer, or agent receive, directly or indirectly, any commission or reward for procuring a loan from such savings bank, or for selling to such savings bank any note, mortgage, chose in action, or property of any kind whatever.

1. The purchase by the bank from one of its trustees of a mortgage has been held to be in violation of a prohibition that no trustee shall directly or indirectly borrow any of the funds of the bank, and trustees who sanction such use of the money by a co-trustee, equally with him violate the law. 24 Am. & Eng. Ency. of Law, p. 1269.

Deposits. Sec. 16. Every savings bank shall be authorized to receive on deposit any sum or sums of money that may be offered for that purpose, by any person or persons, or by any religious or charitable corporations or societies, or that may be ordered to be deposited by any court of this state, and to invest the same, and declare, credit and pay dividends thereon, as hereinafter authorized and not otherwise: Provided, That such savings bank shall not be compelled to receive sums less than one dollar or exceeding five hundred dollars, in any one year, from any one depositor, unless provision therefor is made in the by-laws thereof.

1. The relation between a savings bank and its depositors:

- (1) The relation is not that of partners.
- (2) The relation is not that of bailee.

- (3) The relation is that of trustee for depositors.
- (4) The relation is that of agent for depositors.
- (5) The relation is that of debtor and creditor.

24 Am. & Eng. Ency. of Law, p. 1246 (2d ed.).

2. A depositor of an amount in excess of the amount fixed by the statute or by-law is not prevented from recovering the amount of his deposit, although he can not receive interest on such excess. *Taylor v. Empire State Sav. Bank*, 21 N. Y. Suppl. 643.

3. A savings bank pass book is not a mere pass book or statement of account; it is issued to the person in whose name the deposit is made and with whom the bank has made its contract of deposit; it is the depositor's voucher, and the only security which he has evidencing the amount of his credit at the bank. *Whalen v. Milholland*, 98 Md. 199, 44 L. R. A. 208.

4. A gift of savings bank deposits by delivery of the pass book is a valid and complete gift of the money represented by it. *Whalen v. Milholland*, 98 Md. 199, 44 L. R. A. 208.

5. Deposits in savings banks are held by the trustees of the bank in a quasi trust capacity and such deposits are not taxable to the depositors, but are subject to taxation as against the bank. *Beard v. People's Savings Bank*, 53 App. 185.

Repayment of deposits. ¶ Sec. 17. The sums so deposited shall be repaid to each depositor, or his legal or authorized representatives, when required by him or by them, but at such times, and with such dividends from profits, and under such regulations as the board of trustees may prescribe, not inconsistent with the provisions of this act, which regulations shall be put and kept up in some conspicuous place in the room where the business of the savings bank shall be transacted, and shall not be altered so as to affect any deposits which shall have been made previous to such alteration, until after notice to the person making the deposit, so to be affected: Provided, however, That in order to prevent loss to the depositor, by enforced sales of considerable amounts of securities below their par value, it shall be lawful for the trustees, in their discretion, to require a notice of one week before the withdrawal of any part of any deposit of more than ten dollars, and not exceeding a hundred dollars; of two weeks before the withdrawal of any part of any deposit of more than one hundred dollars and not exceeding five hundred dollars; of three weeks before the withdrawal of any part of any deposit of more than five hundred dollars and not exceeding one thousand dollars; of thirty days before the withdrawal of any part of

any deposit of more than one thousand dollars and not exceeding two thousand dollars; of sixty days before the withdrawal of any part of any deposit of more than two thousand dollars and not exceeding three thousand dollars; and of ninety days before the withdrawal of any part of any deposit of over three thousand dollars; but in any case where a deposit has been made for a definite time, no notice for a withdrawal at the expiration thereof shall be necessary unless the depositor fails to withdraw the same within ten days; And provided further, That if at any time, in the opinion of the [bank commissioner] auditor of state, any savings bank is solvent and doing business according to law, and that it is necessary in order to prevent a run on such bank, and also to prevent loss and sacrifice to the depositors, the trustees of such bank may, by and with the written consent of said [bank commissioner] auditor, make any and all changes deemed necessary in regard to the notices which are above required to be given by the depositors for the withdrawal of their deposits, and also extend the time that notices shall be given by the depositors, for the withdrawal of any and all deposits, to any period of time not exceeding six months. (As amended, Acts 1875, p. 129.)

1. In most savings banks there is a rule that payments made to the person producing the pass book shall discharge the bank. Such a by-law is reasonable and discharges the bank when it has exercised care in paying, even though the presenter was a thief. 5 Cyc. 608.

2. A by-law of savings bank, to the effect that where a depositor loses his pass book, and does not give the bank due notice of the loss, and the book is presented by some one else representing himself to be the depositor, and money is paid such person, the bank will not be liable, is a reasonable regulation. *Burrill v. Dollar Sav. Bank*, 92 Pa. St. 134, 37 Am. Rep. 669.

3. The payment to a person not entitled to receive the deposit, though he is in possession of the pass book, will not discharge the bank if at the time of the payment a fact or circumstance was brought to the knowledge of the bank officials calculated to excite the suspicion and inquiry of an ordinary careful person and they failed to make inquiry or exercised at least ordinary care and diligence. *Gearns v. Bowery Sav. Bank*, 135 N. Y. 557, 32 N. E. 249.

4. It is the duty of the bank to use the most improved system of banking; such as signature book, card system for the preservation of signatures and test questions. *Ladd v. Augusta Sav. Bank*, 96 Me. 510, 58 L. R. A. 288.

Deposits by aliens, infants or females. Sec. 18. Whenever any deposit shall be made in a savings bank by an alien, minor, or a female, being or thereafter becoming a married woman, the same shall be held for the exclusive right and benefit of such depositor, free from the control or lien of all persons except creditors, and shall be repaid with the dividends thereon to the person making the deposit, and the receipt or acquittance of such alien, minor or female, shall be a sufficient release and discharge to the corporation for such deposit.

Investment of funds. Sec. 19. It shall be lawful for the trustees of any savings bank to invest the money deposited therein only as follows, to wit:

First. In the bonds or notes of the United States.

Second. In the notes or bonds of the State of Indiana.

Third. In the orders or bonds of any county, township, city or town in this state, or of any other state of the United States, issued pursuant to the authority of law.

Fourth. In the notes or bonds of any state in the union that has for five (5) years previous to such investment being made regularly paid the interest on its legal bonded debt in lawful money of the United States.

Fifth. In bonds or notes secured by first (1st) mortgage on real estate situate in the State of Indiana, or in any adjoining county in an adjoining state, worth at least twice the amount loaned thereon.

Sixth. In promissory notes, payable at some chartered bank within this state, and having not to exceed twelve (12) months to run from the date of the loan or purchase, made or endorsed by two (2) or more responsible freeholders, one of whom at least shall be a resident of the State of Indiana, and no such promissory note shall exceed the amount of ten thousand dollars (\$10,000).

Seventh. In real estate subject to the provisions of section twenty-four (24).

Eight. In dealing in exchange by purchasing and selling sight or time drafts and acceptances payable out of this state, but no such draft or acceptance shall exceed ten thousand dollars (\$10,000) nor have to exceed one hundred twenty days (120) to run from the time of the purchase thereof. (As amended, Acts 1917, p. 416.)

The original of this section was amended by Acts 1875, p. 129; Acts 1893, p. 273; and Acts 1903, p. 211.

1. The trustees are liable for a loss caused by lending a person a larger amount than that prescribed by law; for taking inadequate security; and for loans made in disregard of the charter and by-laws. 5 Cyc. 606.

2. Savings banks are required by positive law to lend their deposits in a prescribed manner, but loans made in violation thereof will not prevent the bank from recovering; *ultra vires* is not a good defense. *Hurd v. Kelly*, 78 N. Y. 588, 34 Am. Rep. 567; 5 Cyc. 610.

3. When the money deposited in a savings bank is invested in non-taxable securities, such securities can not be taxed as cash. *Beard v. People's Sav. Bank*, 53 App. 185.

Loans on stocks. Sec. 20. It shall be lawful for the trustees of any savings bank, while awaiting opportunity for the judicious investment of the funds deposited with them, to loan the moneys so deposited upon the security of the stocks and other securities mentioned in the preceding section, not exceeding ninety per cent. of the cash market value thereof.

Depreciation of securities. Sec. 21. Should the stocks or other securities on which loans are made, pursuant to the provisions of the last preceding section, depreciate in value after making any loan thereon, it shall be the duty of the trustees to require the immediate payment of such loan made by them thereon, or additional security therefor, so that the amount so loaned shall at no time exceed ninety per cent. of the market value of such securities; and no loan shall be so made without an agreement from the borrower that the same shall be subject to the conditions of payment or of additional security, as required by this section.

Reserve. Sec. 22. The trustees may keep in reserve not exceeding twenty per cent (20%) of the total amount of deposits without investment, or deposit the same on call with or without interest, in any bank organized under the laws of this state or in any bank in any adjoining state, organized under the laws of such state, or in any national bank in the United States. Provided, That no such deposit shall be made outside the State of Indiana excepting in national banks as aforesaid without the approval of the

[bank commissioner] auditor of the State of Indiana. (As amended, Acts 1917, p. 175.)

The original of this section was amended by Acts 1903, p. 321.

Restriction on loans. Sec. 23. No loan shall be made upon the security of real estate, as provided in subdivision five of section nineteen, or upon notes or bills as provided in subdivision six of said section, without the consent of a majority of the trustees, or the unanimous consent of the committee of investment, which may be created under the by-laws of such bank.

Real estate purchases. ¶ Sec. 24. It shall be lawful for the trustees of any savings bank to purchase, hold and convey real estate as follows, and not otherwise:

First. A lot and banking-house requisite for the transaction of its business, and for an income from such portions of the same as are not required for its own use.

Second. Such as shall have been mortgaged to it in good faith for money loaned, or upon which it shall have purchased a mortgage.

Third. Such as shall have been purchased at sales upon judgments or decrees obtained upon claims in favor of the bank, or which may be so purchased to prevent loss upon claims held by the bank.

Banking house—Cost. Sec. 25. ¶ No banking house shall be erected or purchased by any savings bank until the estimated cost of the same, and of the income to be derived therefrom, shall be submitted to and approved by the [bank commissioner] auditor of state, nor shall the same cost to exceed five per cent. of the amount of deposits of such bank.

Real estate sales. Sec. 26. All such real estate as is described in subdivisions two and three of section twenty-four shall be sold within three years after the same has become vested in such savings bank, if the same will bring the amount due on account thereof; and if it can not be sold for a sufficient sum for that purpose, the [bank commissioner] auditor of state may give such further time as he shall deem necessary in which to sell the same.

Restrictions on dealings. Sec. 27. It shall not be lawful for any savings bank to deal or trade in real estate in any other case or for any other purpose than as authorized in section twenty-four of this act, or to deal or trade in any goods, wares or merchandise, except as herein authorized, and except such personal property as may be necessary in the transaction of its business.

Surplus fund. Sec. 28. It shall be the duty of the trustees of every savings bank to reserve and set aside from the gross amount of gains or profits of the institution not less than one-half of one per cent. per annum on the deposits, to be held and invested, as provided for in this act, as a surplus fund, to meet any contingency in its business, until such surplus shall be equal to ten per cent. upon the amount of deposits, and it shall be lawful to accumulate such surplus until the same shall equal twenty-five per cent. upon the whole amount of deposits so held. (As amended, Acts Special Session 1881, p. 89.)

Accounts and dividends. Sec. 29. All savings banks shall make up their accounts semi-annually to the first days of January and July in each year, and all dividends or profits shall be divided, credited, or paid to the depositors on or before the 31st days of January and July respectively.

Dividends from profits. Sec. 30. It shall not be lawful for the trustees of any savings bank, or for any officer or agent thereof, to declare or pay any dividend except from profits actually earned during the period for which the same is made, after deducting therefrom the necessary expenses incurred in transacting the business of the corporation, and not less than one-half of one per cent. upon the deposits at the time of making such dividend, for account of the surplus fund, as provided in section twenty-eight of this act.

Restrictions on dividends. [Sec. 31. It shall not be lawful for the trustees of any savings bank to declare or allow dividends on any deposit for a longer period than the same has been deposited, except that deposits made not later than the 10th days of January, April, July and October in each year, may, unless prohibited by the by-laws of

the bank, have dividends, provided the same shall not exceed six per cent. per annum, declared upon them, the same as though deposited on the first day of either of those months respectively. And no dividend shall be paid unless upon deposits when the same are declared: Provided, That the trustees may in their discretion allow dividends upon moneys that shall have been on deposits but which shall have been withdrawn prior to the regular times for declaring dividends. (As amended, Acts 1873, p. 28.)

Limit of dividends. Sec. 32. No dividend shall be declared upon any deposit exceeding the sum of five thousand dollars, or upon any or all of several deposits standing in the name of any one depositor, in trust or otherwise, whose aggregate shall exceed said sum, unless the same shall have been on deposit for at least six months prior to such dividend being declared.

Discrimination in dividends. Sec. 33. It shall be lawful for the trustees of any savings bank to discriminate (in the modes to be provided in their by-laws) in the dividends declared by them, between the deposits of a thousand dollars and under and the deposits of more than a thousand dollars, and between those deposits which have remained undiminished for one year and upwards, and those that have had some portion withdrawn within one year preceding such dividend, so that deposits of the smaller amount or remaining undiminished the longer time shall receive a larger pro rata dividend than the others.

Division of Profits. Sec. 34. It shall be the duty of the trustees, after deducting the necessary expenses and the reserve for the surplus fund (which shall not be less than a half per cent. nor to exceed three per cent.), to divide as nearly as may be practicable all the remaining profits, within the discretion conferred in the last preceding section, ratably among the depositors, except as hereinbefore provided.

Residue distributed. Sec. 35. Any residue of profits remaining undivided after compliance with the provisions of the last section, shall be divided as often as once in three years among those who are depositors, when the

distribution is made in such manner as the trustees shall direct, so as to be as equitable as practicable: Provided, That the trustees shall not be compelled to reduce the reserved surplus upon the whole amount of deposits below ten per cent.

Trustee, how suspended. Sec. 36. The [bank commissioner] auditor of state may, at any time, by an order under his hand and seal, for due cause to be set forth in such order, suspend any trustee from his office; and upon the application of two-thirds of the trustees of any savings bank, setting forth good reasons for such action in regard to any trustee, it shall be his duty to issue such order.

Notice of suspension. Sec. 37. Upon issuing any such order, a copy shall be transmitted to the savings bank of which the person so suspended is a trustee, and such order shall be entered in full upon the minutes of such savings bank, and notice thereof be given to such trustee, to whom, upon application, such original order shall be delivered.

Vacation or confirmation. Sec. 38. The auditor of state shall also transmit a duplicate copy of such order to the judge of the circuit court of the county where such bank is located, by whom, after proper notice to such trustee that he may be heard in his defense, such order may be vacated or confirmed and its confirmation shall operate to remove such trustee from office.

Removal of officers. Sec. 39. If any trustee or other officer, or any five depositors, shall file an application in the circuit court of the county where a savings bank is located, setting forth that any trustee, officer or agent of such savings bank, has, within twelve months then next preceding, violated any of the provisions of section fifteen of this act, the particulars of which violations shall be specified in such application, such officer, trustee or agent shall be cited to appear and answer to such application, and upon proof of the allegations therein, such officer, trustee or agent shall be removed by the order of said court.

Annual report. Sec. 40. Every savings bank shall, on or before the first day of February in each year, make

a report in writing to the [bank commissioner] auditor of state, of its condition on the first day of January preceding, after the dividend up to that day shall have been allowed, and credited to the accounts of the depositors.

Assets to be stated. Sec. 41. Such report shall state the total amount of assets of every kind, the amount loaned or outstanding on notes or bonds and mortgages; the rate of interest obtained on loans made; the cost, par value, estimated market value and rate of interest of all stock investments, designating each particular kind of stock; any stock investments, the interest on which is in arrears for three months or upwards, with a particular account of the same; also, any bonds or notes and mortgages, the interest on which is in arrears for three months or upwards; the amount of bank stock held by such savings bank, together with the names of the banks in which such stock is held; the amount of promissory notes or bills of exchange; the amount invested in real estate, its cost, estimated market value, and the yearly income derived from the same; the amount of cash on hand or on deposit in banks, and the names of the banks where deposited, and the rate of interest received on such deposit; the average monthly balances so had on deposit in banks during the preceding year, and any other item of assets or resources owned or possessed by such savings bank on that day.

Liabilities to be set out. Sec. 42. Such report shall also state all the liabilities of the savings bank, making the same on the said first day of January; the amount due depositors, including the dividend credited to them for that day, stating such dividend as a separate item, and any other debts against or claims upon such savings bank, which may become a charge upon its assets. Such report shall also state the number of open accounts on said first day of January; the amount deposited and the amount withdrawn during the previous year; the whole amount of interest earned; the amount of expenses, specifying separately the amount paid for services, and the amount of dividends credited to depositors for the year preceding said first day of January; the number of new accounts opened, and the number of accounts closed during the year.

Form of report. Sec. 43. The [bank commissioner] auditor of state is hereby authorized to prescribe forms for the report contemplated by the preceding two sections, and may, in his discretion, call for any other items of information, which he may deem necessary to a complete knowledge of the operations and conditions of any savings bank.

Report, how verified. Sec. 44. Such report shall be verified by the oath of the principal officer of the savings bank, and the statement of assets shall be verified by the oath of one or more of the trustees who examined the same, pursuant to the requirements of section forty-eight of this act.

Penalty for not reporting. Sec. 45. If any savings bank shall fail to furnish to the [bank commissioner] auditor of state any report or statement required by this act, at the time so required, the officer or agent of said bank, whose duty it shall be to make such report or statement shall, upon conviction thereof by presentment or indictment, be fined in any sum not less than one dollar nor more than fifty dollars, for every day he shall so fail to furnish such report or statement.

Bank commissioners report. Sec. 46. It shall be the duty of the [bank commissioner] auditor of state on or before the 10th day of February, in each year that the legislature shall meet in regular session, to communicate to the legislature a statement of the condition of every savings bank from which a report has been received during the preceding two years, and to suggest any amendment to the laws relating to savings banks which, in his judgment, may be expedient or necessary, to increase the security of depositors, or impart greater efficiency to the administration of the affairs of savings banks.

Examination by trustees. Sec. 48. It shall be the duty of the trustees of every savings bank, by a committee of not less than three of such trustees, on or about the first day of January in each year, to thoroughly examine the books, vouchers and assets of such savings bank, and its affairs generally, and the schedule or statement of assets reported to the [bank commissioner] auditor of state for

the first of January in each year shall be based upon such examination, and shall be verified by the oaths of the trustees making the examination; but nothing herein contained shall be construed as prohibiting the trustees of any savings bank from requiring such examination at such other times as they shall prescribe.

Pay of officers. Sec. 49. It shall be lawful to pay trustees of savings banks, acting as officers or agents of the same, whose duties require and receive their regular and faithful attendance at the bank, such compensation as in the opinion of the majority of the board of trustees shall be just and reasonable; but such majority shall not include any trustee or trustees to whom such compensation shall be voted, and the vote fixing or altering the compensation of any officer or agent who is also a trustee, shall be transmitted to the [bank commissioner] auditor of state, with the names of the yeas and nays upon each vote, for his information; and when the deposits of any savings bank shall reach or exceed the sum of one hundred and fifty thousand dollars, the trustees may, with the written approval of the [bank commissioner] auditor of state, allow the president for his services a sum not exceeding one thousand dollars per annum, and with the like consent may allow each member of the finance committee not exceeding the rate of six hundred dollars per annum for their services, such committee, however, not to exceed three members; and when the deposits of any savings bank shall reach or exceed five hundred thousand dollars, the trustees may, with the written approval of the [bank commissioner] auditor of state, allow the president of such bank for his services a sum not exceeding fifteen hundred dollars per annum, and with the like consent may allow each member of the finance committee not exceeding the rate of seven hundred and fifty dollars per annum for their services; such committee, however, not to exceed three members. And when the deposits of any such savings bank shall exceed nine hundred thousand dollars, and with the like consent of the [bank commissioner] auditor of state, the trustees may allow the president a sum not exceeding five thousand dollars per annum for his services, and the members of such finance committee a sum not exceeding fifteen hundred dollars per annum each for

their services: And, provided, That the members of such finance committee in no event shall exceed three in number: Provided, further, That in the event the [bank commissioner] auditor of state finds that the compensation paid to the officers named herein is excessive, he shall have power to revoke his approval of the same. (As amended, Acts 1903, p. 337.)

The original of this section was amended by Acts 1873, p. 28; and Acts 1891, p. 49.

Special pay of trustees. Sec. 50. It shall be lawful for any savings bank that has accumulated a surplus of not less than five per cent. upon its deposits, to pay trustees who render special personal service (beyond the ordinary duty of attending meetings and serving upon committees other than of examination), such compensation as may be determined upon by the board of trustees and approved by the [bank commissioner] auditor of state. The trustee or trustees for whom compensation for such special service is voted, shall have no voice in the decision of such question. But no such compensation shall be voted by any savings bank to any trustee until the [bank commissioner] auditor of state has made or caused to be made an examination of the affairs of such savings bank, and certified to its possession of the required surplus; and if such surplus shall thereafter become impaired, so as to be less than five per cent. of its deposits, such compensation to trustees shall cease until such surplus is again restored to five per cent.

Gratuities. Sec. 51. Whenever any savings bank has accumulated a surplus equal to fifteen per cent. of its total amount of deposits, it shall be lawful to award and pay to such trustees as have attended every regular meeting of the trustees during the year, a gratuity of not exceeding three dollars for each meeting, so attended, as a reward for faithful service.

Certificates of deposit. Sec. 52. All certificates or other evidences of deposit made in pursuance of the regulations of any savings bank shall be as binding upon the corporation issuing the same as if made under its common seal.

Deposits for wards. Sec. 54. Whenever any sum of money, not exceeding one thousand dollars, shall be paid into any court in this state for the use of any minor or insane person, and there shall be no guardian qualified to receive and receipt for the same, the court may, in its discretion, order such sum of money to be deposited in any savings bank organized under this act, to the credit of any such minor or insane person, and such sum, and the dividends thereon, shall not be withdrawn from such savings bank except upon the order of said court or until a guardian shall have been lawfully appointed for such minor, or until the disability of such insane person shall be declared to be removed by some competent court, or a guardian shall have been appointed.

Dissolution—Receiver. Sec. 55. Whenever any savings bank, organized under the provisions of this act, shall fail for thirty days to pay any of its depositors as required by law, or whenever it shall appear, to the satisfaction of the [bank commissioner] auditor of state, that the trustees or officers of any such bank are mismanaging its affairs, and the same is insolvent or in imminent danger of insolvency, it shall be the duty of such [bank commissioner] auditor forthwith to cause a complaint to be filed in the name of the State of Indiana, in any court of competent jurisdiction of the proper county, against such savings bank and the trustees and officers thereof who are managing its affairs, setting forth the facts and asking for the dissolution of such corporation and the winding up of its business. The court in term time, or the judge in vacation, may, upon proper cause shown by affidavits, place all the assets of the corporation in the hands of a receiver, according to the practice of courts of equity, and, upon trial of the cause, may adjudge the corporation dissolved and order a distribution of the assets thereof, after payment of costs and expenses, among the depositors and other creditors of such savings bank. If it shall be established, upon the trial of the cause, that any trustee, or other officer, has been guilty of any wilful or fraudulent misconduct whereby the assets of the corporation have been wasted or lost, the court shall render judgment against him to make good all such losses

as his misconduct has occasioned and such recovery shall be for the benefit of the depositors and other creditors of such savings bank; and the court, in such proceedings, may render several judgments against the several trustees or officers who have been guilty of such misconduct.

CHAPTER VII.

MORTGAGE GUARANTEE COMPANIES.

[Acts of 1913, p. 222.]

Companies authorized. Section 1. That any number of persons not less than ten (10) may associate themselves together by written articles of incorporation for the purpose of organizing a corporation to engage in the mortgage guarantee business, and any corporation so organized shall have the powers and be entitled to the rights and privileges and subject to the duties and obligations herein prescribed, and shall have perpetual succession.

Articles of association. Sec. 2. Said articles of incorporation shall set forth: First. The name of the corporation. Second. The principal place of business. Third. The amount of the authorized capital stock, which shall be divided into shares of \$100.00 each. Fourth. The name and residence of each of the incorporators. Fifth. The style by which the managers of said corporation shall be designated, whether directors or trustees, the manner of their selection, and the names of the first board of directors or trustees and their terms of office. Sixth. The time of the commencement of business by said corporation.

Said articles of incorporation shall be signed by each of the incorporators and acknowledged before some person authorized to administer oaths. Such articles of incorporation shall thereupon be submitted to the attorney-general and if found by him to be in proper form and to comply herewith he shall issue his certificate to that effect, whereupon said articles of incorporation, together with said certificate, shall be filed in the office of the secretary of state who shall issue a certificate of such filing. A certified copy of said articles of incorporation and of said certificate shall thereupon be filed in the office of the [bank commissioner] auditor of state and also in the office of the recorder of the county where the principal place of business of said corporation is located. A certified copy of said articles of incorporation and of said certificate under the hand and seal of

the secretary of state or of the recorder of said county, shall be taken as evidence in all courts and places of the legality of the organization of said corporation and as compliance with the provisions of this act.

Fees. § Sec. 3. The secretary of state shall require the payment of such fees based on the authorized capital of said corporation as are now required by law.

Name. Sec. 4. The secretary of state shall require the payment of articles of incorporation where the name specified therein is so similar to the name of any other corporation already in existence as might tend to confusion.

(The second line in this section is evidently an error.)

Amount of capital stock. § Sec. 5. The amount of the capital stock of any such corporation where its principal place of business is located in a city of 50,000 inhabitants or more shall not be less than two hundred thousand (\$200,000) dollars and in cities between twenty-five thousand and fifty thousand not less than one hundred thousand (\$100,000) dollars, and in cities of 25,000 or less not less than fifty thousand (\$50,000) dollars which shall be payable at such times and in such amounts and manner as the board of directors or trustees shall by resolution require; but such capital stock may be increased or decreased at any special or regular meeting of the stockholders of said corporation by a three-fourths vote of all the outstanding stock: **Provided,** That no decrease shall be made that would reduce the capital stock of any such corporation to less than is required in cities of designated population as above stipulated.

Stockholders' liability. Sec. 6. The shareholders in all corporations organized under this act shall be individually liable in a sum equal to the par value of the shares held by them for the satisfaction of any debt or liability which may at any time remain unpaid after all the assets of said corporation shall have been exhausted.

Payment for stock, doing business. Sec. 7. No corporation organized under this act shall be authorized to transact business except preliminary to its organization

until the whole of its capital stock, where the same does not exceed one hundred thousand (\$100,000) dollars shall have been subscribed and paid in.

Board of directors. Sec. 8. All the corporate powers of corporations organized under this act shall be exercised by a board of directors or trustees of not less than seven (7) nor more than twenty-one (21) persons, as may be fixed in the by-laws of said company from time to time. A majority of all such directors or trustees must be citizens of this state and each director or trustee shall at all times own at least fifty (50) shares of the capital stock of such corporations.

Annual meetings. Sec. 9. The annual meeting of the shareholders for the election of directors or trustees shall be held at the office of the company upon a date fixed in the by-laws of said corporation, notice of which shall be given by the secretary of the company by mailing to each stockholder a notice of such meeting at least ten (10) days prior to the date thereof. Vacancies in the board of directors or trustees may be filled by them between meetings of the stockholders.

Certificate as to payment of stock. Sec. 10. Whenever any corporation organized under this act shall have properly organized by filing its articles of incorporation as herein provided, and shall have elected its officers, and the proportion of capital subscribed and paid in as provided in section five (5) hereof, the president and secretary of such corporation shall certify to such facts, which shall be attested by a majority of the directors or trustees of said corporation, which statement shall be filed with the [bank commissioner] auditor of state.

The [bank commissioner] auditor of state shall thereupon execute and deliver such corporation his certificate reciting such fact and the same shall be sufficient authority to said corporation to begin business.

Qualifications of directors. Sec. 11. The board of directors or trustees immediately upon their election shall qualify by taking an oath to properly discharge their duties and that they are the owners in their own names of the

number of shares required to qualify as a director or trustee as herein prescribed, which oath shall be filed in the office of the [bank commissioner] auditor of state. Said board of directors or trustees shall thereupon enact and promulgate such by-laws, rules and regulations as they deem proper for the management and government of the affairs of such corporation. Said by-laws shall provided for the election of a president, and one or more vice-presidents, a secretary and treasurer and such other officers or agents as they shall deem proper and shall prescribe the duties of such officers or agents. Said board of directors or trustees shall require of such officers, agents or other employes as they deem proper a good and sufficient bond for the faithful discharge of their duties, which bonds shall be maintained on file in the office of [bank commissioner] auditor of state.

Powers of corporation. Sec. 12. Any corporation organized pursuant to this act and authorized to begin business shall have power and authority:

(a) To acquire by purchase, lease or otherwise, to own, hold, use and improve and for that purpose to mortgage, lease, sell and convey such real estate and personal property as may be necessary for the convenient transaction of its business.

(b) To act as trustee for any person, firm or corporation or for itself in the acceptance of any mortgage, deed of trust or other instrument securing the payment of any bond, note or other instrument.

(c) To loan and invest its funds, or funds deposited with it, in bonds, notes or other instruments secured by mortgage, deed of trust or other instrument, whether in favor of said corporation directly or as trustee for itself, or others, and to purchase, own, hold, sell, negotiate, guarantee and deal in bonds, notes and other evidences of indebtedness payment of which is wholly or partially secured by mortgage, deed of trust or other instruments on real estate, to issue, own, hold, negotiate, sell, guarantee and deal in certificates based on a deposit of bonds, notes or other instruments secured by mortgage, deed of trust or other instrument, creating a lien on real estate, which certificate shall be payable at such times and in such manner and under

such conditions and stipulations and with such rate of interest as its board of directors or trustees may prescribed.

(d) To acquire, hold, own, improve, convey, mortgage, lease or otherwise dispose of any interest in any real estate which such corporation shall acquire under or by virtue of the foreclosure of any mortgage, deed of trust or other instrument or security or by the compromise, compounding or settlement of any obligation or security or otherwise acquired in the course of its business either as owner or trustee.

(e) To act as agent in the care of real estate and to collect rents, solicit insurance and for the general transaction of its business to make and deliver and to receive and accept all necessary and proper deeds, conveyances, mortgages, deeds of trust, leases and other contracts and writings and to have and exercise all the necessary rights, powers and privileges necessary or proper to fully and effectually carry out the intent and purpose of the organization of such corporation.

Provided, however, That no corporation organized under this act shall engage in any banking, mercantile, manufacturing, trust, safe deposit or other business except as is hereby expressly authorized: Provided, That any promissory note, bond or instrument in writing made negotiable by the laws of this state when payable at a bank within this state, shall in like manner be negotiable if made payable at the office of any such corporation.

(f) In the event any corporation organized under this act shall elect to make a deposit of bonds, notes or other instruments secured by mortgage, deed of trust or other instrument and to issue, negotiate and sell certificates or obligations on account of such deposit, the holders of such certificates shall have a lien against such deposit of bonds, notes or other instruments secured by mortgage, deed of trust or other instrument for the payment of such certificates to the extent and in the manner provided in such certificates.

Loan to officers. Sec. 12½. No corporation organized under this act shall loan any of its funds, moneys or other capital to any officer or director or trustee thereof, nor shall any such director, trustee or officer become in

any manner indebted to said corporation by means of any overdraft, promissory note, account instrument, guarantee or other contract whatsoever.

Investment of funds. Sec. 13. Corporations organized under this act shall loan or invest their funds or funds deposited with them only on bonds, notes or other evidence of indebtedness secured by first mortgage or deed of trust on real estate worth at least twice as much as the amount loaned thereon or invested therein, the value of which real estate shall be determined by an appraisement to be made by two disinterested freeholders, residents of the vicinity where the real estate is situate.

Examination. Sec. 14.^{1/2} Every corporation organized under this act shall be examined by the [bank commissioner] auditor of state or one of the bank examiners of his office, under his direction, who shall make a thorough examination of the books, property, effects and liabilities of any such corporation and of its affairs generally as often as said [bank commissioner] auditor of state in his judgment shall deem necessary or proper, which examination shall be made without previous notice to such corporation. Said auditor of state or bank examiner shall have power to examine any of the directors, trustees, officers, employes or agents of such corporation under oath touching any of its affairs and for that purpose he shall have power to administer oaths. A report of such examination shall be made in writing and placed on file in the office of the [bank commissioner] auditor of state and a copy thereof certified to any such corporation so examined on demand. For all such examinations the [bank commissioner] auditor of state shall collect from such corporation the same fees as are now required to be paid by trust, loan and safe deposit companies for making such examination, together with necessary traveling expenses, which shall be paid by the corporation so examined, and which fees when collected shall be paid to the general fund of the state.

Improper business. Sec. 15. If it shall appear to said [bank commissioner] auditor of state from any such examination or report thereof so made that the business

of said corporation is not being conducted in accordance with this act or is being conducted in an unsafe and unauthorized manner, he shall order the discontinuance of such illegal or unsafe practices and shall require conformity with the provisions of the requirements of this act, and of the law, and with safety and security in its transactions, and if such corporation shall refuse or neglect to comply with such demands so made, then it shall be the duty of the [bank commissioner] auditor of state to certify such facts to the attorney-general of state, who may thereupon institute an action in the circuit or superior court of the county where such corporation has its principal place of business in the name of the State of Indiana on the relation of the attorney-general in whom the right to institute any action to dissolve or have a receiver appointed for any corporation organized under this act is exclusively vested and summons shall be served on said corporation as in other cases. If the court shall find that such corporation is doing an illegal business and that the allegations of said complaint are true it may decree a dissolution of said corporation and appoint a receiver for its affairs; in the event that the court shall decree that a receiver shall be appointed one of the state bank examiners in the office of the [bank commissioner] auditor of state or some competent person designated by the [bank commissioner] auditor of state shall be appointed as such receiver, who shall be appointed as such receiver, who shall proceed to dispose of all the assets and discharge all the liabilities of such corporation and the balance, if any, to be disbursed to its stockholders in a manner as speedily as practical under the orders of said court. In the event such corporation shall feel itself aggrieved by the decision of said court in decreeing the appointment of said receiver as aforesaid, it may appeal to the supreme court of this state, as in other civil causes.

Reports. Sec. 16. Every corporation organized under this act shall make a written report to the auditor of state on or before the first day of February of each year showing its actual condition on December 31st of the preceding year. Said report shall show the authorized capital, the amount of paid up capital, the amount of surplus and undivided profits and how same is invested. Said report

shall also show all direct liabilities, and shall also state the amount of obligations outstanding, the payment of which are guaranteed by said corporation. Said report shall also state the various items constituting the income of said corporation, and the expenses incurred in its operation, which report shall be sworn to by the president and secretary of such corporation and attested by a majority of its directors or trustees.

CHAPTER VIII.

CHARTER BOARD.

[Acts of 1915, p. 550.]

Banks and trust companies—Charter board.

Section 1. That there is hereby created a state charter board, to be composed of the governor, secretary of state, and the auditor of state, which shall meet on the first and third Wednesday of each month in the office of the governor. The governor shall be president, and the clerk of the banking department shall be the secretary of the board.

Board approves applications. Sec. 2. All applications for the organization and incorporation of banks of discount and deposit, savings banks, and loan, trust and safe deposit companies shall be referred to the charter board. The charter board shall make a careful examination as to the financial standing and character of the incorporators, organizers or partners: also of the public necessity of the business in the community in which it is sought to establish a bank of discount and deposit, a savings bank, or loan, trust and safe deposit company, and if the board shall determine either of the questions unfavorably to said applicants, organizers or partners, it shall refuse said charter. (As amended, Acts 1917, p. 689.)

Investigation of proposed banks. Sec. 3. It shall be unlawful for any individual, firm or corporation to hereafter engage in a banking business after the enactment of this act without first receiving from the charter board the approval of their application. Any person violating the provision of this section either individually or as an interest party, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined in a sum not less than \$300.00 nor more than \$1,000, or by imprisonment in the county jail not less than thirty days nor more than one year, or by both such fine and imprisonment. When in the judgment of said charter board it is advisable to make a personal investigation as to the need and necessity of establishing a bank of discount and deposit, private bank, savings bank,

or loan, trust or safe deposit company in any community, then the board may appoint some person to make a thorough investigation, and said person shall make a written report of his findings and file same with the charter board; such person so appointed shall receive a compensation of five (\$5.00) dollars per day, and necessary traveling expenses, the same to be paid by the petitioners for a bank of discount and deposit, private bank, savings bank, or loan, trust and safe deposit company.

CHAPTER IX.

COMMERCIAL DEPOSITS.

[Acts 1917, p. 189.]

Minimum cash on hand. Section 1. That every bank of discount and deposit, savings bank, loan and trust and safe deposit company or private bank in the State of Indiana receiving commercial deposits payable upon demand and subject to check, shall at all times have on hand or in bank, in cash or currency an amount equal to at least twelve and one-half per cent ($12\frac{1}{2}\%$) of the aggregate amount of such commercial deposits.

CHAPTER X.

TRUST POWERS.

[Acts 1915, p. 310.]

Banks—Trust powers. That every person, firm or corporation transacting a banking business subject to the provisions of an act entitled, "An act to regulate and supervise the business of banking by individuals, partnerships or unincorporated persons," approved March 8, 1907; and every corporation transacting a banking business as prescribed in, "An act to authorize and regulate the incorporation of banks of discount and deposit in the State of Indiana," approved Feb. 7, 1873, and all acts amendatory or supplemental thereto, and every national bank coming within the United States federal reserve act shall be empowered by this act to accept and execute trusts of any and every description which may be committed or transferred to them, under the same rules and regulations as now govern like powers in loan and trust companies. In case of any person, firm or corporation transacting a banking business and accepting any trust under the provisions of this act, the president or cashier of such bank is authorized to receive and execute the same in the name of the bank.

CHAPTER XI.

RECEIVER FOR BANKS AND TRUST COMPANIES.

[Acts 1915, p. 546.]

Banks and trust companies—Petition for receivers.

Section 1. That "Whenever a bank of discount and deposit, private bank, savings bank or loan, trust and savings bank has been in voluntary liquidation, for a period of eighteen months or more and in the opinion of the [bank commissioner] auditor of state, the affairs are not being administered to the best interests of the depositors and stockholders, then the [bank commissioner] auditor of state may petition the court for the appointment of a receiver and when such appointment has been made, such receiver shall take charge and proceed to administer and terminate the affairs of the institution under the direction of the court in accordance with section 2 of the acts of 1911," approved February 17, 1911.

CHAPTER XII.

BANK AND TRUST COMPANY EXAMINERS.

[Acts 1911, p. 30.]

Examiners, appointment, salary bond. Section 1. That for the purpose of examining all private banks, banks of discount and deposit, savings banks, loan and trust and safe deposit companies formed, organized and doing business pursuant to the laws of the State of Indiana, the bank commissioner, with the approval of the governor, shall appoint as many examiners to be denominated bank examiners as in their judgment are necessary to carry out the provisions of this act, the number of examiners to be appointed shall not exceed ten and each shall be paid a salary to be fixed by the bank commissioner and approved by the governor and necessary traveling and other expenses incident to their work, the salary and expenses to be paid out of the funds appropriated to the department of banking. Such examiners shall be subject to removal by the bank commissioner at any time, and shall qualify by giving a bond payable to the State of Indiana in the sum of ten thousand dollars (\$10,000), to be approved by the bank commissioner, conditioned for the faithful performance of duty as prescribed by law. Such examiners shall have the powers and perform the duties hereinafter prescribed under the direction of the bank commissioner. (As amended, Acts 1921, p. 816.)

Examinations, reports, fees, receiver. Sec. 2. The affairs of every private bank, bank of discount and deposit, savings banks, loan and trust and safe deposit companies shall be examined by one of the examiners provided for by section 1 of this act, as often as shall be deemed necessary, and such examiner shall have the power to, and shall make a thorough examination into all the affairs of such bank, savings bank, loan and trust and safe deposit company, and in doing so, to examine any of the officers, and agents thereof, under oath; and such examiner shall have the power to administer oaths to such officers or agents; and if such

private bank, bank of discount and deposit, savings bank, loan and trust and safe deposit company be in an insolvent or failing condition, or if the assets thereof are being wasted or improperly used or converted, said examiner shall at once notify the bank commissioner who shall thereupon direct said examiner or some other person appointed by him to at once take charge and control of said private bank, bank of discount and deposit, savings bank, loan and trust and safe deposit company, and all the books, notes, cash on hand and other asserts [assets], and said bank commissioner shall immediately thereafter make application to the judge of the circuit court or superior court of the county where such private bank, bank of discount and deposit, savings bank, loan and trust and safe deposit company is situated, either during term time or vacation, for the appointment of a receiver to take charge of said private bank, bank of discount and deposit, savings bank, loan and trust and safe deposit company. Notice of such application shall be given to the stockholders and depositors of said private bank, bank of discount and deposit, savings bank, loan and trust and safe deposit company by publication as directed by the judge of said court. Should any such private bank, bank of discount and deposit, savings bank, loan and trust and safe deposit company fail or suspend between the periods of examination authorized, it shall be the duty of the officers of said private bank, bank of discount and deposit, savings bank, loan and trust and safe deposit company to immediately notify the bank commissioner of such failure or suspension, and said commissioner shall thereupon appoint some proper person to take charge of the assets of said private bank, bank of discount and deposit, savings bank, loan and trust and safe deposit company pending the application for and appointment of a receiver as herein provided for. Such person so appointed to take charge of the assets of any such private bank, bank of discount and deposit, savings bank, loan and trust and safe deposit company shall receive the compensation assessed by the bank commissioner, which must be allowed him by the court having jurisdiction over the receiver appointed. Said examiner shall make a full and detailed report of the condition of the private bank, bank of discount

and deposit, savings bank, loan and trust and safe deposit company to the bank commissioner and the private bank, bank of discount and deposit, savings bank, loan and trust and safe deposit company shall not be subject to any other visitorial powers than such as are authorized by this act, except such as are vested in the several courts of this state. Banks, savings banks, loan and trust and safe deposit companies being administered by receivers and assignees shall be subject to the same examination and be required to report to the bank commissioner as is required of solvent banks, savings banks, loan and trust and safe deposit companies. Fees for the examination of private banks, banks of discount and deposit, savings banks, loan and trust and safe deposit companies shall be as follows: For examining private banks, banks of discount and deposit, savings banks, loan and trust and safe deposit companies having assets of less than \$150,000, twenty dollars; those having assets of \$150,000 and less than \$300,000, twenty-five dollars; those having assets of \$300,000 and less than \$500,000, thirty dollars; those having assets of \$500,000 and less than \$750,000, thirty-five dollars; those having assets of \$750,000 and less than \$1,000,000, fifty dollars, assets above \$1,000,000, fifty dollars and three dollars additional for each \$100,000 or fraction thereof until assets reach \$3,000,000 and two dollars additional for each \$100,000 or fraction thereof in excess of \$3,000,000, which amount shall be assessed by the bank commissioner upon and paid by the respective banks, savings banks, loan and trust and safe deposit companies so examined, and when collected to be paid to the general fund of the state. A failure to pay such assessment on notice shall be cause for the appointment of a receiver of the bank, savings bank, loan and trust and safe deposit company in default. The commissioner shall also assess all expenses and outlays incident to taking and holding possession of such banks, savings bank, loan and trust and safe deposit company as herein provided, including fifteen dollars per day for the services of the examiner or other person appointed by the bank commission in charge thereof, to be paid before any distribution of the assets of said banks, savings bank, loan and trust and safe deposit company, the allowance therefor as assessed by the bank

commissioner to be made by the court having jurisdiction of the receiver, any amount allowed and paid for the services of the examiner to be paid into the general fund of the state, as examination fees are paid. (As amended, Acts 1921, p. 816.)

Disclosures by Examiners. Sec. 3. It shall be unlawful for any examiner appointed under the provision of this act to disclose to any persons other than officially to the bank commissioner by the report made to him, or in compliance with the order and precept of a court, the names of depositors in any bank, savings bank, loan and trust and safe deposit company, or the amount of money on deposit at any time in favor of any depositor, or disclose any other information concerning the private accounts of such depositors. And every examiner who violates the foregoing provisions shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding one hundred dollars. (As amended, Acts 1921, p. 816.)

1. If a bank is in an insolvent or failing condition at the time the state bank examiner makes an examination, or, if between the periods of examination a bank fails or suspends, the auditor of state is required to take charge of such bank, and all the books, notes, cash on hand, and other assets. It is thereupon made the duty of the auditor of state to apply to the circuit court of the county where such bank is situated, for the appointment of a receiver for the bank. *Coddington v. Canady*, 157 Ind. 243.

CHAPTER XIII.

TAXATION OF BANKS AND TRUST COMPANIES.

Where assessed. Sec. 10. All personal property shall be assessed to the owner in the township, town or city in which he is an inhabitant on the first day of March of the year for which the assessment is made, with the following exceptions:

Third. All shares in banks shall be assessed to their owners in the city or town where the bank is located.

Personal property of banks—Brokers, etc.—Where Assessed. Sec. 15. The personal property of banks or bankers, corporate or unincorporated, brokers, stock jobbers, insurance companies, hotels, livery stables, eating houses, ferries and mining companies, and all companies except companies specially provided for in this act, shall be listed and assessed in the township, town or city where such personal property is situated, except as otherwise hereinafter provided.

Taxation of stock. Sec. 73. The shares of capital or capital stock of any bank, banking association or trust company located within this state, whether organized under the laws of this state or the United States, or of any other state or country, shall be assessed to the owner thereof in the township, city or town where such bank, banking association or trust company is located, and shall be taxed at the same rate as other property in the same locality is taxed and with reference to its value on the first day of March of the current year.

Surplus and undivided profits. Sec. 74. The surplus and undivided profits of all savings banks in the State of Indiana shall be assessed for taxation in the same manner as the surplus and undivided profits of national and state banks in the State of Indiana; and the taxes assessed against said surplus and undivided profits shall be paid by said savings banks: Provided, That whenever any such savings bank shall have acquired an ownership in real estate, so much of the value of such investment in real

estate as may be carried in the surplus and undivided profits funds of such banks on the first day of March of the current year and shown in the statement of assets and liabilities to be filed as herein provided, shall be deducted from the valuation of such surplus and undivided profits funds of such savings bank. All savings banks in the State of Indiana shall make the same reports of surplus and undivided profits to the taxing authorities as it is now provided by law shall be made by national and state banks and such other similar institutions.

Unincorporated banks. Sec. 75. The shares of stock or membership shares or certificates of stock in any bank owned and operated by any individual, partnership or unincorporated association within the State of Indiana shall be assessed to the owner of such shares in accordance with the provision of the preceding section.

Statement by banks—Duty of county auditor and state board of tax commissioners. Sec. 76. The president, cashier or other accounting officer of any bank, banking association or trust company or mortgage guarantee company, or individual, partnership, or unincorporated association shall, between the first day of March and the first day of April of each year, make out a statement under oath in duplicate, showing the number of shares, certificates of capital or capital stock of such bank, banking association or trust company or mortgage guarantee company or individual, partnership or unincorporated association, the name and residence of each stockholder or shareholder with the number of shares owned by such stockholder or shareholder in such bank, banking association or trust company or mortgage guarantee company, or individual, partnership or unincorporated association and shall fix what he deems the true cash value of each of said shares and also the true cash value of the entire capital or capital stock of such bank, banking association or trust company or mortgage guarantee company, or individual, partnership or unincorporated association as of the first day of March of the current year and shall deliver said statement to the auditor of the county wherein such bank, banking association or trust company or mortgage guarantee com-

pany, or individual, partnership or unincorporated association is located, and said county auditor shall thereupon immediately forward said statement to the state board of tax commissioners. Said state board of tax commissioners shall value and assess for taxation the capital or capital stock of such bank, banking association or trust company or mortgage guarantee company, individual, partnership or unincorporated association as hereinafter provided. Whenever any such bank, banking association or trust company, or mortgage guarantee company, individual, partnership or unincorporated association shall have acquired an ownership in real estate so much of the value of such investment in real estate as may be carried in the capital stock account (capital stock, surplus or undivided profit accounts) on the first day of March of the current year and shown in the statement of assets and liabilities to be filed as herein provided, shall be deducted from the valuation of the capital stock of such bank, banking association, or trust company, or mortgage guarantee company, individual, partnership or unincorporated association.

In making such statement of the true cash value of such shares the credits shall be given and the bona fide indebtedness of such bank, banking association or trust company or mortgage guarantee company, individual, partnership or unincorporated association shall be deducted therefrom as in the case of individuals; and in giving such credits and such deductions such bank, banking association or trust company or mortgage guarantee company, individual, partnership or unincorporated association shall file a true statement of all the assets and the liabilities of such bank, banking association or trust company, or mortgage guarantee company, individual, partnership or unincorporated association the same as carried in its daily statement or balance sheet as of said first day of March of the current year. The state board of tax commissioners shall determine and settle the true cash value of each share of stock after an examination of such statement and also an examination, under oath, of such officer or officers if it be deemed necessary; and, in determining and fixing the true cash value of each of said shares of stock, it shall take into consideration the capital, surplus, undivided and other profits re-

maining in the hands of such bank, banking association or trust company, mortgage guarantee company, individual, partnership or unincorporated association together with all reserve accounts taken from the earnings of and carried by such bank, banking association or trust company, mortgage guarantee company, individual, partnership or unincorporated association for any purpose whatever. Said state board of tax commissioners may take into consideration in determining and fixing the true cash value of such shares of stock the earning power and the dividends made and distributed by such bank, banking association, trust company, mortgage guarantee company, individual, partnership or unincorporated association and such other facts as may be pertinent to such determination.

Refusal of bank to make statement—Proceedings. Sec. 77. In the case of the failure or the refusal of the president, cashier or other proper accounting officer of such bank, banking association or trust company, mortgage guarantee company or individual, partnership or unincorporated association to make and return such statements within the time aforesaid the auditor of the proper county shall and the state board of tax commissioners may summon such officer to appear forthwith before him, and in the case of the state board of tax commissioners it, with the books of such bank, banking association or trust company, mortgage guarantee company, or individual, partnership or unincorporated association, and said auditor and state board of tax commissioners are hereby empowered to compel the attendance of said officers in obedience to such summons and to examine them under oath and make such investigation at the expense of such bank, banking association or trust company, mortgage guarantee company, or individual, partnership or unincorporated association, as may be necessary to obtain the information provided for in the preceding section.

Dividends—Retention for Tax Payment—Treasurer. Sec. 78. It shall be the duty of every such bank, banking association or trust company, mortgage guarantee company, individual, partnership or unincorporated association, or the managing officer or officers thereof, after

being notified in writing to do so by the county treasurer, to retain so much of any dividend or dividends belonging to such stockholders, as shall be necessary to pay any tax levied upon their shares of stock respectively, until it shall be made to appear to such bank, banking association or trust company, mortgage guarantee company, or individual, partnership or unincorporated association that said taxes have been fully paid and satisfied. And such bank, banking association, trust company, mortgage guarantee company or individual, partnership or unincorporated association shall pay over to such county treasurer, upon his demand, the amount of such dividend or dividends as may be necessary to pay such tax. And any such bank, banking association, or trust company, mortgage guarantee company or individual, partnership or unincorporated association which shall pay over, or authorize the paying over, of any such dividend or dividends, or any portion thereof, contrary to the provisions of this section, shall thereby become liable for such tax; or such bank, banking association, trust company, mortgage guarantee company or individual, partnership or unincorporated association may pay the tax due from any of its shareholders and retain the amount thereof from any dividends due or from subsequent dividends.

Entry of valuation. Sec. 79. The county auditor shall enter the valuation of such shares of capital stock on the tax duplicate of the current year after the same has been certified to him by the state board of tax commissioners and shall compute and extend taxes thereon the same as against the valuation of other property in the same township, town or city.

Taxes, When lien on shares. Sec. 80. Taxes assessed upon shares of stock of bank, banking association or trust company, mortgage guarantee company, individual, partnership or unincorporated association shall become a lien thereon upon the first day of March of the current year, and such lien shall be in nowise affected by any sale or transfer of such stock. Such taxes shall be paid by the bank, banking association or trust company, mortgage guarantee company, or individual, partnership or unincorporated association in the same manner that other individuals

or corporations pay their taxes, and subject to the same penalties.

Municipal taxing. Sec. 81. Nothing in this act shall be so construed as to exempt from taxation for municipal purposes the shares of capital or capital stock of any bank or banking association, trust company, mortgage guarantee company or individual, partnership or unincorporated association organized under the laws of this state or the United States, but all such shares of stock may be assessed and taxed for all purposes at the same rate that other property is assessed and taxed in the same locality.

Reports of corporations generally. Sec. 107. Every manufacturing, mining, gravel road, plank road, savings bank, insurance and other associations incorporated under the laws of this state (other than railroad companies and those heretofore specifically designated) shall, by its president or other proper accounting officer, between the first day of March and the fifteenth day of May of the current year, in addition to the other property required by this act to be listed, make out and deliver to the county assessor a sworn statement in duplicate of the amount of its capital stock, setting forth particularly:

First. The name and location of the company or association.

Second. The amount of capital stock authorized, and the number of shares in which such capital stock is divided.

Third. The amount of capital stock paid up.

Fourth. The market value, or if no market value, then the true cash value of the shares of stock.

Fifth. The total amount of indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

Sixth. The value of all tangible property.

Seventh. The difference in value between all tangible property and the capital stock.

Eighth. The name and value of each franchise or privilege owned or enjoyed by such corporation.

Ninth. The dividends which have been paid during the year last preceding the making of said report on said stock;

the amount of the surplus or reserve fund of said corporation and its net income from its business during the year last preceding the filing of said report and any other information that the state board of tax commissioners may require to aid in determining valuation and the state board of tax commissioners shall have the power to add to or change the form of the statement from time to time as it may deem necessary.

Such schedule shall be made in conformity to such instruction and forms as may be prescribed by the state board of tax commissioners. In case of the failure or refusal to make report, such corporations shall forfeit and pay one hundred dollars for each additional day such report is delayed beyond the fifteenth day of May, to be sued and recovered in any proper form of action in the name of the State of Indiana, on the relation of the prosecuting attorney, such penalty, when collected, to be paid into the county treasury. And such prosecuting attorney in every case of conviction shall be allowed a docket fee of ten dollars to be taxed as costs in such action.

Reports in duplicate—Duty of county board of review and state board. Sec. 108. Such statements shall be scheduled in duplicate by the county assessor, and such schedule and duplicate with the statement and duplicate so scheduled, shall be returned by the county assessor to the county auditor. The auditor shall annually, on the meeting of the county board of review lay before said board the schedule and statements herein required to be returned to him, and the said auditor shall immediately forward to the state board of tax commissioners the duplicate statements and duplicate schedules. The county board of review shall value and assess the capital stock and all franchises and privileges of such companies or associations in the manner provided in this act, and the said auditor shall compute and extend the taxes for all purposes on the respective amounts so assessed, the same as may be levied on other property in such towns, cities or other localities in which such companies or associations are located. In all cases where the capital stock of any such corporation exceeds in value that of the tangible property listed for taxation, as reviewed by the county board of review, then such

capital stock shall be subject to taxation upon such excess of value; where no tangible property is returned or found, and the capital stock has a value, it shall be assessed for its true cash value. But where the capital stock or any part thereof is invested in tangible property, returned for taxation, such capital stock shall not be assessed to the extent that it is so invested. That for the purpose of determining the actual value of said shares of stock the said county board of review may take into consideration the market value of said shares of stock, the dividends paid by and the earning capacity of said corporation or association and all other facts and circumstances in relation to the actual value of said shares of stock. Every franchise or privilege of any such corporation shall likewise be assessed at its true cash value. Where the full value of any franchise is represented by the capital stock listed for taxation then such franchise shall not itself be taxed; but in all cases where the franchise is of greater value than the capital stock, then the franchise shall be assessed at its full cash value, and the capital stock in such case shall not be assessed: Provided, however, That the state board of tax commissioners making a review for reassessment, as hereinafter provided, shall have the power to value and assess the capital stock and all franchises and privileges of such companies or associations the same as county boards of review.

Failure to make return—Duty of county auditor.

Sec. 109. In case of the failure or refusal of the person or persons, joint stock associations, companies or corporations, their officers, agents or employees specified in the preceding section to make and return the statements and reports therein provided for, the county auditor shall make out such returns, statements and valuations from the best information he can obtain, and for that purpose he shall have power to summon and examine under oath any person whom he may believe to have knowledge thereof. And he shall add to such valuation twenty-five per centum thereon as a penalty.

[Acts 1921, p. 111.]

Joint Stock Land Banks—Assessment for Taxation. Section 1. That the property of joint stock land

banks incorporated under the provisions of an act of congress entitled "An act to provided capital for agricultural development, to create standard forms of investment based upon farm mortgages, to equalize rate of interest upon farm loans, to furnish a market for United States bonds, to create government depositories and financial agents for the United States, and for other purposes" known as "the federal farm loan act" enacted July 17, 1916, shall be assessed for taxation in the same manner and to the same extent that property of the national banks in Indiana are assessed for taxation, by assessing the shares of the capital stock thereof at their true cash value against the share holders thereof and such banks shall make return for the purposes of taxation as is now required of national banks, but when such joint stock land bank stock is owned by a bank, banking association, trust company or mortgage guarantee company conducting the business of such joint stock land bank in connection with its own business such assessment shall not be made separately against the bank, trust company or mortgage guarantee company as shareholder but the state board of tax commissioners, in determining and fixing the true cash value of the shares of the capital stock of such bank, trust company, or mortgage guaranty company, shall consider and include as a part of such value the value of the shares of the capital stock of such joint stock land bank as owned by such bank, trust company, or mortgage guarantee company.

CHAPTER XIV.

PUBLIC DEPOSITORIES.

Cash book—Daily balance. Section 1. That it shall be the duty of every public officer in this state who receives or disburses public funds, to keep a cash book wherein there shall be daily entered, by item, all receipts of public funds, which cash book shall be daily balanced, showing funds on hand at the close of each day: Provided, Said cash book shall be a public record and open to public inspection.

State officers—Payment to treasurer. Sec. 2. After thirty (30) days from the taking effect of this act, all funds shall be paid into the state treasury by each state official handling public funds, and an itemized statement thereof shall be kept by said state official as provided for in section 1, and said state official shall make quarterly settlements with the auditor of state of such funds paid into the treasury, as provided for in this act.

Boards and trustees—Payments. Sec. 3. It shall be the duty of the state board of medical registration and examination, the Indiana board of pharmacy, the several boards of trustees of the several hospitals for the insane, the board of trustees of the Indiana state school for the deaf, the board of trustees of the Indiana school for the blind, the board of trustees of the Indiana school for feeble-minded youth, the board of trustees of the Indiana soldiers' and sailors' orphans' home, the board of trustees of the Indiana state soldiers' home, the board of trustees of the Indiana state prison, the board of trustees of the Indiana reformatory, the board of trustees of the Indiana boys' school, the board of trustees of the Indiana girls' school, the board of trustees of the Indiana woman's prison, the board of trustees of the Indiana village for epileptics, the board of trustees of the hospital for treatment of tuberculosis, the board of control of the state soldiers' and sailors' monument, or the secretary, superintendent, or other person having charge of such institutions, boards, schools or offices, on the first Monday in each month to pay into the

state treasury all funds in their possession due the state from receipts and earnings: Provided, That this section shall not prevent the several boards and persons named herein having control of state funds from keeping on hand such working balance as may be directed by the state board of finance provided for herein.

Fee—Salaries—Payments. Sec. 4. In all cases where it is now provided by law that any state officer, board, body or department, shall collect any fee for any service rendered, or examination had, and appropriate the fee so collected to pay the salary, per diem, or the expenses of any state officer, board, body or department for rendering service or making examination, such fees shall be by such officer, board, body or department, paid into the state treasury as provided for in this act, and the salary, per diem and expenses on account of such services, shall be paid out of the state treasury upon an account duly filed and approved as is now provided by law. Such salary, per diem and expenses, however, shall not be in excess of the fees so collected and turned into the state treasury unless otherwise specifically provided.

State board of finance. Sec. 5. The governor of the state, the auditor state, and the treasurer of state shall constitute a state board of finance, and shall have advisory supervision of the safekeeping of all funds coming into the state treasury, and all other funds belonging to the state coming into the possession of any state board, officer or state institution. Such board of finance shall have supervision of all the fiscal affairs of the state, including the state sinking funds. Such state board of finance shall meet, immediately after the taking effect of this act, in the office of the auditor of state, and organize by electing from their membership a president. The auditor of state shall be the secretary of said board of finance. The proceedings of such board shall be entered at length in a record to be provided for that purpose, and be approved and signed by the president of the board, and attested by the secretary. Such board of finance shall hold sessions whenever necessary to discharge its duties. Its sessions shall be public, and its records shall be kept in the office of the auditor of state and

be subject to public inspection. The president of said board shall convene such board whenever requested so to do by one of its members, or whenever necessary to the performance of its duties. Such board may sue, and be sued in its name, in any action, and in any court having jurisdiction, whenever necessary to accomplish the purpose of this act. The treasurer of state shall be required to execute a bond with good and sufficient surety to be approved by the governor and auditor state, which bond shall be in an amount to be fixed by said governor and auditor, not to exceed double the amount such treasurer may have in his hands and under his control, and conditioned upon the faithful performance of his duties as such treasurer and shall be in lieu of the bond now required by law.

County board of finance. Sec. 6. The board of county commissioners in each county in the state shall constitute a county board of finance. The members of such county board of finance shall immediately after the taking effect of this act, meet in the room of the board of county commissioners in the court house. The county auditor shall be the secretary of such county board of finance and a record of its proceedings shall be made. The meetings of such board shall be public and its records open to inspection. Such board may sue and be sued in its name, in any action, and in any court having jurisdiction whenever necessary to accomplish the purposes of this act: Provided, That in all counties in which the county treasurer is ex officio treasurer of the city which is the county seat of such county, and is ex officio treasurer of the school city or board of school commissioners of such county seat city, the county board of finance shall consist of the board of commissioners of such county, the mayor and comptroller (if any) and the chief executive officer of such school city or such board of school commissioners of such county seat city. The auditor of such county shall act as secretary of such board and in case of a tie shall cast the deciding vote. The mayor shall preside but shall have the power to vote on all questions. When there is no comptroller in such city, such board shall consist of the other named officers as above set forth. In such counties such county board of finance shall and is hereby constituted the board of finance

to have charge and control under this act of the county funds, also the funds of such county seat city, also of the funds of such school city or board of school commissioners in such county seat city.

Compensation. Sec. 7. The county auditor shall be paid fifty dollars (\$50.00) per annum in addition to his regular salary, on account of the additional services required of him by this act, to be allowed by said board and to be paid out of the county treasury. The other members of the county board of finance shall serve without compensation other than their salary as county commissioners. Such board shall hold meetings whenever necessary in the discharge of its duties as such, and the county auditor shall convene such board whenever reason therefor exists or when requested so to do by one of its members. Said county board of finance shall have advisory supervision of the deposit of public funds of the county treasury as provided for in this act.

Cities and towns—Board of finance. Sec. 8. The mayor and common council of each city, except such county seat cities as are mentioned in section 6 hereof, and the board of trustees of the several towns in this state, for the purposes of this act, shall be constituted boards of finance of such cities and towns respectively. The city clerk in each city, and the town clerk in each town, shall act as secretary of his respective board of finance: Provided, That in cities having a comptroller, said comptroller shall be the secretary of said board of finance. The city and town boards of finance shall meet immediately after the taking effect of this act, and organize by electing a president of their respective boards, and a record thereof shall be made of their action. Said meetings shall be held at the usual place of holding meetings of the said city councils and town boards, which meeting shall be open to the public, and the record at all times, open to inspection. Such city and town boards of finance may sue and be sued in their names, as such, in any action, and in any court having jurisdiction, whenever necessary to accomplish the purposes of this act. The members of such boards shall serve without compensation, other than the salaries now allowed by law for their

services as officers for said cities and towns. Such board shall hold meetings whenever necessary to the discharge of their duties, and the secretaries thereof shall convene the same when requested so to do by any member of said board. Such boards of finance shall have advisory supervision of the safe-keeping and deposit of the public funds of their respective cities and towns.

School and township board of finance. Sec. 9. The board of school commissioners of each school city in this state, having such, and the board of school trustees of each city in this state, having such, except those in such county seat cities as are mentioned in section 6 hereof, and the board of school trustees of each township in this state, and the advisory board of each township in this state, for the purposes of this act are hereby constituted a board of finance for their respective corporation. The boards of finance of the several townships, and the boards of finance of the several school cities and school towns of this state, shall meet immediately after the taking effect of this act, at their usual place of holding meetings in their respective cities, towns and townships. Said meetings shall be open to the public, and records thereof made, and each board shall organize by electing a president and secretary from its membership. Such several boards may sue and be sued in their names as such, in any court having jurisdiction, whenever necessary to accomplish the purposes of this act. The members of such boards shall serve without additional compensation, and meetings shall be held whenever necessary in the discharge of their duties. Said city and town school boards, and advisory boards of townships, acting as boards of finance for their respective school cities and school towns and townships, shall have advisory supervision of the safe-keeping and deposit of all public funds belonging to such school cities, school towns and to such townships and the several school townships.

Deposits—Treasurers. Sec. 10. Immediately after the organization of said several boards of finance and the designation by them of public depositories, as by this act provided, the treasurer of state, the several county treasurers, the several city treasurers, the several town

treasurers, the several treasurers of the board of school commissioners of the several school cities, the several treasurers of the board of school trustees of school cities, the several treasurers of the board of trustees of school towns and the several township trustees, who receive, or have on hand any public funds by virtue of such office, and subject to deposit, shall make deposit of such funds in the depository or depositories selected by said boards of finance respectively, and file with the secretary of the said respective boards a verified statement of the funds deposited.

Requirements as to depository. Sec. 11. No public funds shall be deposited in any bank, banking institution or trust company of this state, pursuant to the provisions of this act, unless such institution is subject by law to visitation and examination by the comptroller of the currency for the United States government, through national bank examiners, or by the [bank commissioner] auditor of state through state bank examiners and until such depository has presented to said board of finance a personal bond executed by not less than seven (7) freeholders of the State of Indiana, as security in a sum equal to sixty per cent. [of] the maximum amount of the funds to be held on deposit at any one time, or has presented a surety company bond in a sum equal to one-half the amount of funds to be so held at any one time, said bonds to be approved by the said respective boards of finance. (As amended, Acts 1909, p. 182.)

Other forms of security. Sec. 12. The several banks and trust companies may, in lieu of a personal or surety company bond provided for in section 11 hereof, be designated as depositories upon their delivery to the state board of finance, or to the several boards of finance of counties, cities, towns, school cities and school towns, and townships, the bonds of any county of this state, or issued by any county of this state for the improvement of roads, bonds of the United States, or bonds of the State of Indiana, for the full face value equal to one-half of the maximum amount to be deposited in any bank or trust company, which bonds shall be deposited with, and held by the auditor of state, or by the respective boards of finance of the counties, cities, towns, school cities, school towns, and townships as

security for such deposits: Provided, That before such national, state, or county bonds, or other form of security are accepted by the several boards of finance, they shall determine the value and validity of said security so tendered: Provided, further, That any bank or trust company may furnish the securities provided for in this section for any portion of the maximum amount to be deposited in it, and may furnish the personal or surety company bond pursuant to section 11 hereof, for the remainder of such maximum amount. (As amended, Acts 1911, p. 182.)

Surety disapproved—Court decision. Sec. 13. If any board of finance fails or refuses to approve the bond or securities of any such bank or trust company, the same may be presented to the circuit or superior court in the county, or the judge thereof in vacation, which after three (3) days' notice to the secretary of any such board of finance, shall proceed to hear and determine the sufficiency of such bond or security, and shall approve or disapprove the same as the facts warrant. Such court or the judge thereof in vacation shall also investigate the financial responsibility of any such bank or trust company and determine its fitness to be designated a depository of public funds. If such court or the judge thereof in vacation approves said bond or security, and finds said bank or trust company a proper institution to be entrusted with such funds, said bank or trust company shall be declared by such court or the judge thereof in vacation a public depository.

It is only in case the board of finance fails or refuses to approve the bond or securities of a bank or trust company proposing to act as a depository that an appeal may be taken under this section. *State, ex rel. Lebanon National Bank v. Board of Finance of Marion Tp. of Boone County*, 174 Ind. 231, 233, 91 N. E. 598.

Inviting proposals by mail. Sec. 14. Within twenty (20) days before the time set for the meeting of said several boards of finance, the secretaries of said boards of finance shall mail to each bank or trust company of their respective townships or counties a notice which shall invite proposals, to be filed with said several boards of finance on the date mentioned in such notice, proposing to receive public funds on deposit as provided for in this act. Such notice to be sent by registered mail and the receipt received

for such letter shall be filed with the records of the office of said secretary. (As amended, Acts 1909, p. 437.)

Proposals for funds—Interest—Surety. Sec. 15. Any bank or trust company subject to examination by state or national authority and having its place of business in this state, and doing business herein, which shall desire to receive public funds of the state on deposit, or any such bank or trust company within any county, desiring to receive on deposit public funds of the county, or of any public corporation within the county shall file with the respective board of finance on the day mentioned in such notice provided for in section fourteen hereof, its written proposal to receive a maximum sum of public funds on deposit, and agree to pay interest on daily balances, at the rate of two per cent. (2%) per annum, and upon semi-annual time deposits, two and a half per cent. (2½%) per annum, and upon annual time deposits three per cent. (3%) per annum: Provided, The bond or securities required in sections eleven and twelve of this act shall be filed and deposited within five (5) days after notice that an award has been made, and before a deposit of any public funds under said award shall be made: Provided, further, That all interest so earned shall be added respectively to the tuition fund of the township, general fund of the state, city and town, county fund of the county, and to the tuition fund of the school city or school town, except in all cases interest on school fund shall be applied to tuition revenue: Provided further, That any interest derived from the funds of a state educational institution, shall be added to the fund from which it is derived. (As amended, Acts 1909, p. 437.)

It is clear from the various provisions of the public depository law that the Legislature intended to require the funds of public corporations to be deposited and kept, so far as practicable, within their territorial limits. The State's funds may be deposited with approved depositories in any county of the State. A county's funds must be deposited within its boundaries, unless there is no qualified depository in such county. State, ex rel. Lebanon National Bank v. Board of Finance of Marion Township of Boone County, 174 Ind. 231, 235, 91 N. E. 598.

Creation of depository — Revocation — Appeal. Sec. 16. The boards of finance shall meet at the time and

place fixed in said notice, and shall open such proposals and consider the same, and any bank, banks or trust companies within the state tendering security as provided for in this act, and agreeing to pay the interest provided herein, shall be constituted depositories for public funds: Provided, That the commission of any depository may be revoked at any time, and an immediate accounting and settlement required by the board of finance under which it operates, for any cause deemed sufficient by such board of finance. Such depository, however, shall have the same right of appeal, and the circuit or superior court, or the judge thereof in vacation, the same jurisdiction to try and determine the case, as provided for appeals in section 13 hereof.

Selecting state depositories—Finance boards.

Sec. 17. The state board of finance shall establish and declare banks and trust companies [depositories] for state funds with reference to the convenience of officers and state institutions using them. When any board of finance has established a depository or depositories for public funds, the president of such board of finance shall approve and accept said bank, banks or trust companies as depositories for public funds, and the secretary thereof shall attest said acceptance, and thereupon the notice, proposal, bond or securities, and acceptances, shall be recorded by the secretary as provided therefor in a book kept for that purpose. Such boards of finance in the acceptances executed by them shall fix the maximum amount of funds which shall at any time be placed on deposit in any such institution, and the attorney-general, upon the approval of this act, shall prepare forms of proposals, forms of bonds and forms of acceptances which shall be used and observed by the several boards of finance, in the execution of this act. The first designation of public depositories pursuant to this act, shall remain effective until the first Monday in January, 1909. On the first Monday in January, 1909, and biennially thereafter, the several boards of finance created by this act shall designate public depositories for the ensuing two years and upon the terms and according to the regulations prescribed in this act, and after notice of their meeting shall have been given for twenty days by the secretaries thereof, as provided in section 14 of this act.

Title to securities—Record—Default—Sale. Sec.

18. The title of all collateral bonds deposited by any bank, banks or trust companies, to secure the deposit of public funds, as provided in this act, shall vest in the board of finance with which the same are deposited, for the use and benefit of the state, [county], city, town, township or school corporation whose funds are secured thereby. There shall be entered on record in the records, of such boards of finance, a list of the bonds so deposited, the date of deposit, and the date of release and surrender of the bonds so deposited. During the time that such bonds are so deposited, and while the funds that secure them remain unpaid and unaccounted for, such bonds so deposited shall not be negotiable or transferred either in writing or by delivery. All interest coupons accruing upon any such bonds while on deposit shall belong to and be delivered by the custodian thereof to the depository depositing the same, provided said depository is not in default in any of the public funds. If a collateral bond matures while the deposit continues, or if for any other reason it becomes necessary to said depository to withdraw such collateral bond or security, the depository depositing the same shall be entitled to withdraw any such collatered bond, substituting therefor other collateral bonds to the approval of said board of finance. In case any depository defaults in the payment of any public funds so deposited, the collateral bonds so deposited shall be sold at public sale for cash, to the highest bidder, after thirty (30) days' notice of the time and place and terms of sale, which notice shall be given by publication in two newspapers of the county where the sale is to take place. The sale of said collateral bonds, for and on behalf of the state board of finance, shall be conducted by the auditor of state; for and on behalf of the county board of finance, by the county auditor; for and on behalf of the city, by the mayor and common council; for and on behalf of the town boards of finance, by the board of town trustees; for and on behalf of the township board of finance by the auditor of the county; for and on behalf of school city and school town boards of finance, by the trustees of such city or town school boards. And the funds realized from such sale shall be applied to the payment of the expenses of the sale, then

the sum due from such depository, and the balance, if any, shall be turned over to such depository. The title of any collateral bonds so sold shall pass by delivery of said board of finance to the purchaser and a record of such sale shall be made by the secretary of said board of finance: Provided, That if the collateral bonds shall not sell for a sum sufficient to pay the amount due by such depository, any balance unpaid shall be a claim against the assets of such depository.

State institution deposits—Treasurers' settlements. Sec. 19. The state board of finance shall arrange for the deposit of all state funds held by state schools or educational institutions, and all funds held by any state institution now authorized to keep public funds on hands, in banks or trust companies, convenient to said officers or institutions and said deposits shall be made in accordance with the provisions of this act, and such state board of finance is hereby authorized to adopt such rules and regulations concerning the safe keeping and deposit of such state funds as may become necessary to accomplish the purpose of this act. That in all settlements made by the several county treasurers of the state with the treasurer of state the treasurer of state shall accept from the county treasurers certificates of deposit issued by any authorized depository of any county in the state in payment of any settlement due the state on account of the common school fund, common school tuition fund and all other funds levied for school purposes for which settlement is required with the treasurer of state, collected by any such county treasurer to an amount approximately equal to the sum of money to be returned to any such county by the state on account of the common school distribution, which certificate of deposit shall be returned to the county in the settlement of any amount due such county on account of such distribution. (As amended, Acts 1909, p. 324.)

Monthly statement by depositories—Checks. Sec. 20. Each depository in this state having public funds on deposit shall furnish to the board of finance, under which it operates, on the first day of each month, an itemized statement of the public funds in such depository, which state-

ment shall be filed and carefully preserved in the office of the secretary of said board of finance, and all sums of interest accruing on the funds deposited as aforesaid shall be credited to the deposit accounts by said depository on the first day of each month for the preceding month, and the auditor of state, and each county auditor, shall charge the treasurers respectively with the amount of such interest and credit the same to the state or county. The city or town board of finance, school city or school town board of finance, and the township board of finance, shall make such settlement concerning interest accruing on public deposits with their treasurers and trustees under such rules and regulations as they may adopt: Provided, That all checks drawn upon depositories shall be signed by officers authorized to sign the same in their official capacity: Provided, further, That all funds paid out of the state treasury shall be by check of the state treasurer upon the warrant of the auditor of state.

Maximum Deposits. Sec. 21. When two (2) or more banks or trust companies in the same county, city, town or township, propose to become depositories of the funds thereof and offer the rate of interest provided for herein, it shall be the duty of the board of finance of such county, city, town or township to select, impartially, as many of such banks or trust companies for depositories as tender satisfactory security for such deposits: Provided, That maximum amount of deposits to be made in any depository selected by one (1) or more of the boards of finance created by this act shall not exceed the sum of five hundred thousand dollars (\$500,000): Provided, That the maximum sum to be deposited in the several depositories shall be awarded among the qualifying depositories in proportion to their capital stock and surplus: and, Provided, That in the event that the depositories qualifying under this act shall not be sufficient in number, the board of finance may in its discretion deposit in any one (1) or more depositories more than the said sum of five hundred thousand dollars (\$500,000): and, Provided, further, That all funds of city, town, townships and school corporations shall be deposited in banks, banking institutions or trust companies designated as public depositories located

within the respective limits of such cities, towns, townships or school corporations, if such there be, which shall accept such deposits of funds on the terms herein provided. In case there is no bank or trust company, within any city, town, township or school corporation, which shall accept such deposits of funds on the terms herein provided, then the funds of such corporation shall be deposited in one (1) or more qualifying banks or trust companies of the county which are most convenient to such corporation, but there shall be no discrimination as between banks of equal convenience outside of such corporation. In case two (2) or more banks or trust companies are designated as depositories the board of finance shall require the officer having charge of the funds to deposit and maintain the balance in each depository as nearly as practicable in proportion to the maximum sum awarded to such depositories, as provided in section seventeen (17) of this act: and, Provided, further, That in case any bank or trust company in this state which has been awarded a deposit of public funds under this act, and is designated a public depository shall at any time desire to give up and relinquish such deposit of public funds; or if any bank which has been designated a public depository shall increase its capital stock, after such award has been made and such bank shall file bond or securities for additional deposits proportionate to such increase of its capital stock, then the said board of finance, in whose jurisdiction said bank or trust company is located, shall have the power and authority to order the proper official to draw on the treasurer of such funds for the purpose of making such transfer as may be ordered by said board of finance: Provided, further, That if any bank or trust company shall be organized after the public depositories shall have been designated for the ensuing two (2) years as provided in section 17 of this act, and if such bank or trust company shall file written proposals with any board of finance to receive public funds on deposit, and shall in all respects comply with the requirements of this act relative to public depositories, it shall be the duty of the proper board of finance to designate such bank or trust company a public depository in the same manner and entitled to the same rights and privileges and sub-

ject to the same restrictions as though such bank or trust company had been designated a public depository and awarded a deposit of public funds at the regular biennial awarding of deposits and designating of public depositories as provided in section 17 of this act. (As amended, Acts 1919, p. 698.)

The original of this section was amended by Acts 1913, p. 279.

Published reports—Auditor's powers. Sec. 22. Every national banking corporation designated as a depository under the provisions of this act having public funds on deposit as such, is hereby required to submit to the state bank examiner for examination, and to submit any published report or reports made to the comptroller of the currency relating to the financial condition of such association. The auditor of state may call for reports from any depository designated as such by any such board of finance whenever in his judgment the same is necessary in order to obtain full and complete knowledge of the condition of the public funds therein deposited.

Selection without advertising—Outside of county. Sec. 23. That in counties where only one bank or trust company is located, the board of finance shall designate such bank or trust company a depository without advertising: Provided, Such bank or trust company agrees to pay interest at the rates as provided for in this act, and gives security as herein provided: Provided, further, That in counties where there is no bank or trust company, or where no bank or trust company offers to accept public funds on deposit and comply with the requirements of this act, the board must designate some bank, banks or trust companies outside of such county, and within the state, as such depository or depositories.

Time of deposits—Penalty—Warrants—City funds. Sec. 24. All public funds paid into the treasury of the state, counties, cities, and towns and school cities and school towns shall be deposited daily in one or more designated depositories in the name of the state, county, municipality, or school corporation by the officer having control thereof, except that the public funds collected by

the secretary of state, auditor of state, attorney-general, clerk of the supreme court, chief oil inspector, commissioner of fisheries and game, or any state officer or board having an office in the state capitol building other than the treasurer of state, shall be deposited with the treasurer of state; all such state funds to be deposited on the day following the collection thereof, and the funds collected by the township trustee to be deposited in the public depository provided therefor, on or before the first and fifteenth days of each month: Provided, That all taxes collected by the county treasurer shall be deposited as one fund in the several depositories selected for the deposit of county funds, and except as hereinafter provided, shall so remain until the same is distributed at the following semi-annual distribution made by the county auditor. And no such officer shall draw any check upon any such depository for any purpose except for the payment of a warrant drawn by the auditor of state, or warrant or order drawn by the county auditor, or the proper officer of a city, town, school city or school town, or in payment of a legal claim against a township, and if any such officer or person mentioned herein shall fail so to deposit such funds, or shall deposit the same in any manner except in accordance with the provisions of this act, or shall draw any check against such funds except as provided for in this act, he shall be deemed guilty of embezzlement of public funds and upon conviction shall be imprisoned in the state's prison not less than one year nor more than twenty years, and fined in any sum not to exceed one thousand (\$1,000) dollars, and may be removed from office under the proceedings authorized by law, and shall be liable upon his official bond for any loss or damage which may accrue: Provided, further, That if any public official charged with any other duty under this act shall knowingly fail to discharge and perform the same, or shall violate any of the provisions of this act, he shall upon conviction thereof be fined in any sum not less than \$50.00 nor more than \$1,000.00, and to it may be added imprisonment in the county jail for any period not less than thirty days nor more than six months: Provided, however, That every county treasurer who, by virtue of his office, shall be the collector of taxes for any city, town, school city or school

town, within his county, shall on the first day of each calendar month, make an estimate of such taxes so collected by him for each such city, town, school city or school town, respectively, during the preceding month and certify the respective amounts to the auditor of such county, and the auditor of such county shall thereupon draw his warrants upon such county treasurer in favor of such city, town, school city or school town for the respective sums so certified which warrants shall be delivered by such auditor to such respective cities, towns, school cities or school towns through the city controller, if any, and if not then to the city or town clerk, and upon the presentation of such warrants to the county treasurer he shall promptly pay the same to the treasurer of such city, town, school city or school town, which respective sums shall be immediately available for the use of such city, town, school city or school town pending a full settlement with the county auditor at the time of his next regular semi-annual distribution of funds and for the purpose of such monthly certification by the county treasurer and the drawing and delivery of such warrants by the county auditor and the immediate use of the amounts so certified; all moneys collected by the county treasurer for the benefit of a teachers' pension fund shall be deemed moneys collected by him for such school city or school town within the meaning of this proviso. All warrants and orders for the payment of public money, excepting state and township funds, shall be drawn by the proper officer upon the proper treasurer, and to each warrant and order when drawn may be attached to a readily detachable slip showing the number, date and amount, name of the payee, the purpose, the fund upon which it is drawn, and the name and office of the drawer; such warrants and order shall be presented to the proper treasurer who shall detach and retain the slip, and stamp upon the warrant or order the name of the depository by which such warrant or order is payable, and countersign the same, and no warrant or order shall be effective until so stamped and countersigned: Provided, however, That the said treasurer when any warrant or order shall be presented for stamping and countersigning may, after stamping and countersigning the same, for convenience of the persons presenting the same, pay the

amount thereof to such holder presenting the same and take an assignment by endorsement of such warrant or order and deposit the same in the proper depository in lieu of the cash so paid out to the holder of such warrant or order. All township warrants shall be drawn by the township trustee directly against a township depository. (As amended, Acts 1911, p. 616.)

Official liability—Exemption. [Sec. 25. When the public funds of the state, county, city, town, townships, or school corporation are deposited by the officers having control thereof, as provided herein, such officer and his bondsmen shall be exempted from all liability thereon by reason of loss of any such funds from failure, bankruptcy, or any other act, of any such depository or depositories, to the extent of the funds in the hands of any such depository or depositories at the time of such failure or bankruptcy; Provided, This act shall be in effect and full force on and after December 1, 1907.

[Acts 1905, p. 219.]

Towns and cities — Depository — Selection of — Sinking fund. Sec. 63. During the month of June of each year, and not later than the fifteenth of June, such commissioners shall notify each incorporated bank and trust company in such city of the amount of money then in the sinking fund and of the probable additions, thereto, and deductions therefrom during the coming fiscal year, and that upon the thirtieth day of June, ensuing, bids will be received and opened for the selection of a depository for the sinking fund for the ensuing year, at which bidding the bidder offering the highest rate of interest for the use of the moneys in the fund during the ensuing year, and being, in the judgment of the commissioners, the best bidder, shall be designated as sinking fund depository for the year. Provided, That in any city where the sinking fund shall have accumulated to the amount of one hundred thousand dollars (\$100,000) or more, the commissioners of such city may in their discretion accept bids for the deposit of any part of such fund not less than twenty-five thousand dollars, in which case they shall give notice in their said notification to bidders of the terms and conditions of such deposits. In

case such division of the sinking fund deposits is decided on, the commissioners may designate any sum or sums as deposits subject to check for the probable payments from the fund during the year, which sums may be bid for specifically or may be included in bids for the whole or any part of the fund; and all checks for such payments shall be drawn against the depository holding such designated funds; and the commissioners may also require surety company bonds of any or all depositories, in their discretion. In case of such division all provisions of said act concerning sinking fund depositories shall apply to each of such depositories, except as modified by this act. (As amended, Acts 1915, p. 600.)

CHAPTER XV.

PETTY LOANS.

[Acts 1917, p. 401.]

Loan business regulated—License—Bond—Fee—Records. Section 1. That no person, co-partnership, or corporation shall make any loan of money, credit, goods, or things in action in the amount or to the value of three hundred (\$300.00) dollars or less, whether secured or unsecured, and charge, contract for, or receive therefor a greater rate of interest than eight per centum per annum, without first obtaining a license from the [bank commissioner] auditor of the State of Indiana. Application for such license shall be in writing and shall contain the full name and address, both the residence and place of business, of the applicant, the trade name, if any, under which said business is to be conducted, and if the applicant is a co-partnership, of the members thereof, or if a corporation, of the directors and officers thereof, also the county and municipality, with street and number, if any, where such business is to be conducted. Every such applicant at the time of making such application shall pay to the [bank commissioner] auditor of state the sum of one hundred (\$100.00) dollars as an annual license fee and in full payment of all expenses of examination and administration under this act. The applicant shall also at the same time, file with the [bank commissioner] auditor of state a bond in which the applicant shall be the obligor, in the sum of one thousand (\$1,000.00) dollars, with one or more sureties to be approved by said [bank commissioner] auditor of state which bond shall run to the State of Indiana for the use of the state and of any person or persons who may have a cause of action against the obligor of said bond under the provisions of this act, and shall be conditioned that said obligor will conform to and abide by each and every provision of this act and will pay to the state and to any such person or persons, any and all moneys that may become due or owing to the state and to such person, or persons, from said obligor, under and by virtue of the provisions of

this act. Upon the filing of such application and the approval of said bond and the payment of said fee, the [bank commissioner] auditor of state shall issue a license to the applicant to make loans in accordance with the provisions of this act for a period which shall expire the first day of May next following the date of its issuance: Provided, That if the license is issued for a period of six (6) months or less the license fee shall be fifty (\$50.00) dollars. Such license shall not be assignable. If in the opinion of the [bank commissioner] auditor of state such bond shall at any time appear to be insecure or exhausted, or otherwise doubtful, an additional bond in the sum of not more than one thousand (\$1,000.00) dollars, satisfactory to the [bank commissioner] auditor of state, shall be filed and upon failure of the obligor to file such additional bond, his license shall be revoked by the [bank commissioner] auditor of state.

The [bank commissioner] auditor of state may, in his discretion, upon notice to the licensee and reasonable opportunity to be heard, revoke such license if satisfied that the licensee has violated any provision of this act, and in case the licensee shall be convicted a second time of a violation of section two (2) of this act the [bank commissioner] auditor of state shall revoke such license: Provided, That the second offense shall have occurred after a prior conviction. The reissuance of a license after a revocation shall be at the discretion of the [bank commissioner] auditor of state.

The license shall be kept conspicuously posted in the place of business of the licensee.

No person, co-partnership, or corporation so licensed shall make any loan or transact any business provided for by this act, under any other name, or trade name, or any other county than that named in the license. Not more than one office, or place of business shall be maintained under the same license, but the [bank commissioner] auditor of state may issue more than one license to the same person, co-partnership, or corporation, upon the payment of an additional license fee and the filing of an additional bond for each license.

In the case of the removal of a licensee he shall at once give written notice thereof to the [bank commissioner] auditor of state who shall attach to the license his consent in writing to the removal.

The [bank commissioner] auditor of state for the purpose of discovering violations of this act, may either personally, or by any person designed by him, at any time and as often as he may desire, investigate the loans and business of every licensee and of every person, co-partnership, and corporation by whom, or for which any such loan shall be made, whether such person, co-partnership, or corporation shall act, or claim to act, as principal, agent, or broker, or under, or without the authority of this act, and for that purpose he shall have free access to the books, papers, records and vaults of all such persons, co-partnerships and corporations, and he shall also have authority to examine under oath, all persons whomsoever, whose testimony he may require, relative to such loans or business.

The licensee shall keep such books and record as in the opinion of the [bank commissioner] auditor of state will enable such [bank commissioner] auditor of state to determine whether the provisions of this act are being observed. Every such licensee shall preserve the records of final entry used in such business, including cards used in the card system, if any, for a period of at least two years after the making of any loan recorded therein.

No licensee or other person or corporation shall print, publish or distribute or cause to be printed, published or distributed in any manner whatsoever, any written or printed statement with regard to the rates, terms or conditions for the lending of money, credit, goods or things in action, in amounts of three hundred (\$300.00) dollars or less, which is false or calculated to deceive.

Rate of interest—Other charges. Sec. 2 Every person, co-partnership and corporation licensed hereunder may loan any sum of money, goods or things in action not exceeding in amount or value the sum of three hundred (\$300.00) dollars and may charge, contract for and receive thereon interest at a rate not to exceed three and one-half ($3\frac{1}{2}$) per centum per month.

Interest shall not be payable in advance or compounded and shall be computed on unpaid balances. In addition to the interest herein provided for, no further or other charge, or amount whatsoever for any examination, service, brokerage, commission or other thing, or otherwise, shall be

directly or indirectly charged, contracted for or received, except the lawful fees, if any, actually and necessarily paid out by the licensee to any public officer, for filing or recording, or releasing any instrument securing the loan in any public office, which fees may be collected when the loan is made, or at any time thereafter: Provided, however, That nothing herein shall preclude the allowance of a reasonable attorney fee, said fee, to be determined and allowed by the court, upon final judgment in foreclosure proceedings, in a court of record.

If interest, or charges in excess of those permitted by this act shall be charged, contracted for, or received, the contract of loan shall be void and the licensee shall have no right to collect, or receive any principal, interest or charges whatsoever.

No person shall owe any licensee as such at any time more than three hundred (\$300.00) dollars for principal.

Specific requirements. Sec. 3. Every licensee shall:

(a) Deliver to the borrower, at the time a loan is made, a statement in the English language showing in clear and distinct terms the amount and date of the loan and of its maturity, the name and address of the borrower and of the licensee and the rate of interest charged. Upon such statement there shall be printed in English a copy of section two (2) of this act.

(b) Give to the borrower a plain and complete receipt for all payments made on account of any such loan at the time such payments are made.

(c) Upon repayment of the loan in full, mark indelibly every paper signed by the borrower with the word "paid" or "cancelled" and discharge any mortgage, restore any pledge, return any note and cancel any assignment given by the borrower as security.

No licensee shall take any confession of judgment or any power of attorney, nor shall he take any note, promise to pay, or security that does not state the actual amount of the loan, to the time for which it is made and the rate of interest charged, nor any instrument in which blanks are left to [be] filled after execution.

Interest rate restrictions—Penalty. Sec. 4. No person, co-partnership or corporation except as authorized by this act shall, directly or indirectly charge, contract for, or receive any interest or consideration greater than eight (8) percentum per annum upon the loan, use or forbearance of money, goods, or things in action or upon the loan, use or sale of credit, of the amount or value of three hundred (\$300.00) dollars or less.

The foregoing prohibition shall apply to any person who, as security for any such loan, use or forbearance of money, goods or things in action or for any such loan, use or sale of credit, makes a pretended purchase of property from any person and permits the owner or pledgor to retain the possession thereof, or who, by any device or pretense of charging for his services, or otherwise, seeks to obtain a greater compensation than is authorized by this act.

Any person, and the several officers and employes of any corporation who shall violate any of the foregoing prohibitions shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred (\$500.00) dollars or by imprisonment of not more than six months, or by both such fine and imprisonment in the discretion of the court.

Any licensee and any person acting as an officer or employe of a licensee, who shall violate any of the provisions of section two (2) of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred (\$500.00) dollars or by imprisonment of not more than six (6) months or by both such fine and imprisonment in the discretion of the court.

No loan or evidence of indebtedness for three hundred (\$300.00) dollars or less, for which a greater rate of interest or charge than is allowed by this act has been contracted for or received, made in any other state or country shall be enforced in this state, for any greater interest rate or charges than authorized herein, and any person in any wise participating therein in this state shall be subject to the provisions of this act.

Exceptions. Sec. 5. This act shall not apply to any person, co-partnership, or corporation doing business under any law of this state or of the United States relating to

banks, trust companies, or building and loan associations, or to corporations organized under the laws of this state, which loaned money at a rate not exceeding eight per cent. per annum, and which require the borrower to purchase certificates of investment equal in amount to the sum borrowed and to pay therefor in uniform weekly installments for not less than fifty weeks.

Laws repealed. Sec. 6. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, and especially an act of the general assembly of the State of Indiana approved March 10, 1913, and known as the "McCormick-Hughes Act" is hereby repealed.

CHAPTER XVI.

LEGAL HOLIDAYS.

[Acts 1905, p. 196.]

Legal holidays—Discovery day. Section 1. The first day of the week, commonly called Sunday; the first day of January, commonly called New Year's day; the fourth day of July; the twenty-fifth day of December, commonly called Christmas day; any day appointed or recommended by the president of the United States or the governor of Indiana as a day of public fasting or thanksgiving; the twelfth day of February, commonly called Lincoln's birthday; the twenty-second day of February, commonly called Washington's birthday; the thirtieth day of May, commonly called memorial day; the first Monday of September, commonly called labor day; the twelfth day of October, commonly known as discovery day; and the day of any general, national or state election, shall be legal holidays within the State of Indiana for all purposes. And when any of said holidays (other than Sunday) comes on Sunday, the Monday next succeeding shall be the legal holiday. (As amended, Acts 1913, p. 759.)

Saturday half-holiday—Cities of 35,000 or more. Sec. 2. It shall be lawful for banks, trust companies and safe deposit institutions in all cities in this state, which have or hereafter may have a population of more than thirty-five thousand inhabitants, according to the last preceding United States census, to close their doors for business at twelve (12) o'clock noon on each and every Saturday in the year, and every Saturday in the year after [twelve] (12) o'clock noon shall, in addition to the legal holidays mentioned in section one (1) of this act, be a legal half holiday for such banks, trust companies and safe deposit institutions and the business thereof.

Negotiable instruments—When payable—Grace. Sec. 3. All bills of exchange, bank checks, promissory notes and other negotiable instruments shall be payable at the time fixed therein, without grace. When the day of matu-

urity falls upon Sunday, or a legal holiday, the instrument shall be payable on the next succeeding business day. Negotiable instruments falling due on Saturday shall be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

CHAPTER XVII.

PUBLIC OFFENSES.

[Acts 1905, p. 584.]

Embezzlement. Section 401. If any banker, broker or person or persons or firm or person or persons constituting such firm, doing a banking business, or any officer, agent or employe of any banking company or incorporated bank, doing a banking business in this state, shall fraudulently receive from any person or persons, firm, company or corporation or from any agent thereof, not indebted to such banker, broker, person or persons or firm, banking company or incorporated bank, any money, check, draft, bill of exchange, stocks, bonds or other valuable thing which is transferable by delivery or indorsement, when, at the time of receiving such deposit, such banker, broker, person or persons, firm, banking company, or incorporated bank is insolvent, whereby the deposit so made shall be lost to the depositor, such banker, broker, person, firm, officer, agent or employe so receiving such deposit shall be deemed guilty of embezzlement, and, on conviction, shall be fined in a sum double the value of the money or other valuable thing so received, embezzled and fraudulently taken, and, in addition thereto, shall be imprisoned in the state prison not less than two years nor more than fourteen years, and be disfranchised and rendered incapable of holding any office of trust or profit for any determinate period. The failure, suspension or involuntary liquidation of such banker, broker, person or persons, firm, banking company or incorporated bank, within thirty days after the time of receiving such deposit, shall be prima facie evidence of an intent to defraud on the part of such banker, broker, firm, person, banking company or incorporated bank or officers, agent or employe of such banking company, firm or incorporated bank. (As amended, Acts 1907, p. 14.)

This statute is constitutional. *State v. Arnold*, 140 Ind. 628.

Overdraft by officer. Sec. 402. Whoever, being president, director, cashier, teller, clerk, officer, or employee

of any incorporated bank, or of any firm, corporation, person or association doing a banking business, shall knowingly overdraw his account in such bank, or in such other institution doing a banking business, or who shall knowingly draw and receive payment on any check on such bank, firm, corporation, person or banking association when he has no funds to his credit therein without first procuring the written consent thereto of the board of directors of any such incorporated bank, or the manager, or managers of any such firm, corporation, person or association doing a banking business, indorsed on such check, shall be deemed guilty of a felony, and, on conviction, shall be imprisoned in the state prison not less than two years nor more than fourteen years, and fined in double the sum so received.

Loan to officer. Sec. 403. Whoever, being president, director, cashier, teller, clerk, officer, or employee of any incorporated bank, or of any firm, corporation, person or association doing a banking business, shall, in any way, obtain as a borrower any of the funds of such bank, firm, corporation, person or association doing a banking business, without first executing his note or other evidence of debt therefor, bearing the written consent thereto of the board of directors of any such incorporated bank, or the manager or managers of any other such firm, corporation, person or association doing a banking business, indorsed on such note or other evidence of debt, shall be deemed guilty of a felony and, on conviction, shall be imprisoned in the state prison not less than two years nor more than fourteen years, and be fined in double the amount so received.

Borrow by officer. Sec. 404. Any board of directors, director or officer of any insurance company, loan and trust and safe deposit company, or surety company, doing business in this state, who shall, directly or indirectly, loan any of its funds, moneys, capital or other property whatsoever, to any director or officer of such insurance company, loan and trust and safe deposit company, or surety company, and any director or officer of any insurance company, loan and trust and safe deposit company, or surety company, doing business in this state, who shall borrow from such insurance company, loan and trust and safe deposit

company, or surety company, any of its funds, moneys, capital or other property whatsoever, shall be deemed guilty of a misdemeanor, and shall, on conviction, be fined not less than one hundred dollars nor more than five hundred dollars, and be imprisoned in the county jail not less than thirty days nor more than six months.

1. The crime created by the statute is consummated when the insolvent bankers fraudulently receive the deposit, and by their failure, suspension, or involuntary liquidation by reason of insolvency, the depositor is deprived of the benefit of his deposit, or such portion of it as has not already been paid back to him, or upon his checks. The depositor is then, at that time, deprived of his contract right to have the money refunded upon demand, or paid out upon checks drawn by him, and, being deprived of this right, the deposit, within the purview of this state, is then "lost to the depositor." *State v. Beach*, 147 Ind. 74.

2. The meaning of the word "lost," in the statute, clearly indicates that the indebtedness of the depositor to the bank or banker must equal or exceed the deposit, and be such that the bank has the legal right to apply the deposit as a payment thereon. *State v. Beach*, 147 Ind. 74.

False statement—Credit. Sec. 678. Whoever, with intent to defraud, or by color or aid of a check, draft or order for the payment of money or the delivery of property, although no express representation is made in reference thereto, obtains from another any money or property, when the drawer or maker of such check, draft or order is not entitled to draw on the drawee for the sum specified therein, or to order the payment of the money or the delivery of the property, shall, on conviction, be fined not less than one hundred dollars nor more than five thousand dollars, to which may be added imprisonment in the state prison not less than one year nor more than five years.

[Acts 1913, p. 626.]

Fraudulent Check. Section 1. That whoever, with intent to defraud by obtaining money, merchandise, property, credit, or thing of value although no express representation is made in reference thereto, or who, in the payment of any obligation, shall make, draw, utter or deliver any check, draft or order for the payment of money upon any bank, depository, person, firm or corporation, knowing at the time of such making, drawing, uttering or delivering that the maker or drawer has not sufficient funds in or credit with such bank, depository, person, firm or corpora-

tion for the payment of such check, draft or order in full upon its presentation, shall, upon conviction, be fined not less than one hundred dollars (\$100.00) nor more than five thousand dollars (\$5,000.00), to which may be added imprisonment in the state prison for not less than one year nor more than five years. The making, drawing, uttering or delivering of such check or draft or order as aforesaid shall be prima facie evidence of intent to defraud. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank, depository, person, firm or corporation for the payment of such check, draft or order.

[Acts 1921, p. 699.]

Penalty for making false statements concerning financial institutions. Section 1. That any person who shall wilfully and maliciously make, circulate or transmit to another or others, any false statement, rumor or suggestion, written, printed or by word of mouth, which is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any bank, savings bank, banking institution, trust company, or building and loan associations doing business in this state, or who shall counsel, aid, procure, or induce another to start, transmit or circulate any such statement or rumor, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment for a term of not more than one year, or both.

[Acts 1905, p. 584.]

Notaries public. Section 1. Section 489. Whoever, while holding any lucrative office, acts as a notary public, or whoever, being an officer in any bank, corporation or association possessed of banking powers, or of any trust company or building and loan association, acts as a notary public in the business of such bank, corporation, association, trust company or building and loan association, shall, on conviction, be fined not less than ten dollars nor more than one thousand dollars, to which may be added imprisonment in the county jail for not less than ten days nor more than six months. (As amended, Act Special Session, 1920, p. 96.)

CHAPTER XVIII.

MISCELLANEOUS.

[Acts 1891, p. 335.]

No officer to be notary public. Section 1. No person, being an officer in any corporation or association, or any bank possessed of any banking powers, shall act as notary public in the business of such bank, corporation or association.

[Acts 1917, p. 401.]

Petty loan law, not applicable to banks. Sec. 2. This act shall not apply to any person, co-partnership or corporation doing business under any law of this state or of the United Staes relating to banks, trust companies, or building and loan association, or to corporations organized under the laws of this state, which loaned money at a rate not exceeding eight per cent per annum, and which requires the borrower to purchase certificates of investment equal in amount to the sum borrowed and to pay therefor in uniform weekly installments for not less than fifty weeks.

[Acts of 1859, p. 103.]

Selling bank notes. Sec. 3. Any person who shall knowingly exchange, barter, sell or put away, for a valuable consideration, any bank note or bill drawn on or by any bank of any state, knowing such bank at the time to be broken or to have suspended specie payment, without disclosing such knowledge to the person receiving such bill or note, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than ten nor more than one thousand dollars.

[Acts 1921, p. 367.]

Branch banks prohibited. Section 1. That it shall be unlawful for any person, firm or corporation engaged in the business of operating a state bank, private bank, savings bank, or loan, trust or safe deposit company to open, or establish a branch bank or branch office: Provided,

That the provisions of this section shall not apply to branch banks or branch offices for which charters have heretofore been granted.

Penalty. Sec. 2. Any person violating the provisions of this act either individually or as an interested party shall be guilty of a misdemeanor and upon conviction thereof, shall be fined in a sum not less than \$300.00, nor more than \$1,000.00, or by imprisonment in the county jail not less than thirty days nor more than one year, or by both such fine and imprisonment.

Repeal. Sec. 3. All laws or parts of laws in conflict with this act are hereby repealed.

[Acts 1919, p. 688.]

Insurance, bonding, trust companies or savings bank—Investment of funds. Section 1. That any life insurance, fire insurance, live stock insurance, casualty or accident insurance, or bonding or surety company, or trust company, or savings bank, now or hereafter organized under the laws of the State of Indiana, in addition to the investment of its funds as now provided by law, be and hereby is authorized and empowered to invest its funds in the bonds issued by any federal land bank or joint stock land bank organized under the federal farm loan act.

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